Univers
Sout
Lib

THE
VICTORIAN CHANCELLORS

Vol. I.

LORD LYNDHURST

1772—1863

From the painting by Thomas Phillips, R.A., 1830, in the National Portrait Gallery

THE VICTORIAN CHANCELLORS

BY

J. B. ATLAY

OF LINCOLN'S INN, BARRISTER-AT-LAW

AUTHOR OF 'LORD COCHRANE'S TRIAL BEFORE LORD ELLENBOROUGH'
'SIR HENRY WENTWORTH ACLAND, BART.: A MEMOIR'
ETC.

IN TWO VOLUMES

VOL. I.

LORD LYNDHURST | LORD COTTENHAM
LORD BROUGHAM | LORD TRURO

WITH PORTRAITS

LONDON
SMITH, ELDER, & CO., 15 WATERLOO PLACE
1906

[All rights reserved]

THE NEW YORK PUBLIC LIBRARY

JN
760
A88v
v.1

PREFACE

In this and a succeeding volume I hope to present memoirs of the illustrious men into whose hands the Great Seal of England was from time to time entrusted by Queen Victoria. The present undertaking makes no claim to be regarded as a continuation of Lord Campbell's 'Lives of the Chancellors.' Apart from all question of literary execution, it differs in scale and in scope from that classical work, and was not begun until I had ascertained that no continuation of the original series was contemplated. The larger part, indeed, of the ground occupied in this volume is actually covered by the posthumous volume in which Lord Campbell professed to write the lives of Lord Lyndhurst and Lord Brougham. And the inclusion of the latter statesman partakes of the nature of 'a fraud on the title'; Lord Brougham surrendered the Great Seal two years and seven months before the accession of her late Majesty, and to style him a Victorian Chancellor is, strictly speaking, a misnomer. His meteoric career, however, is inextricably bound up with the fortunes of his predecessors and immediate successors in office, as well as with the legal and political history of the early years of the reign. To have omitted him would have robbed these pages of all semblance of completeness.

For the life of Lord Lyndhurst Sir Theodore Martin must always remain the prime authority, and the extent of my indebtedness to him may be realised from the repeated references in the text and notes. Written with the

LIBRARY
JAN 14 1937
St. & B.

expressed object of clearing away the heavy load which Lord Campbell had left upon Lord Lyndhurst's memory, the author is at times encumbered by the pious task of refutation, and I am not prepared to accept his conclusions in their entirety ; but those who are curious to see how lightly th obligations of a biographer can rest upon Lord Campbell will follow with keen relish the application of the scalpel by Sir Theodore Martin.

Lord Brougham has fared rather better at his successor's hands ; the tone of the 'Life' is less spiteful, and there is abundance of amusing anecdote, coming in some cases from sources which are entitled to credit. It cannot, however, be accepted as a satisfactory picture of one who, with all his failings, was a very great man. Lord Brougham foresaw his fate, and attempted to forestall and mitigate it by preparing his autobiography for publication. The result of his labours, which appeared in 1871,[1] can only be utilised with extreme caution, and it has verified the prediction of a contemporary critic that 'while unlikely to be extensively read, it will probably prevent any really good life of Lord Brougham from being written.' It contains letters and documents that are of lasting value ; but at the best of times Lord Brougham's recollection of events differed widely from the impression retained by other actors and eyewitnesses. At the date when this autobiographical fragment—for it stops short at the end of 1834—was put together, neither his mental nor his physical powers were equal to the effort. The arrangement is chaotic, and a vast amount of superfluous matter is introduced.

His literary executor was bound, it is true, by the strictest injunctions to print the narrative as the author had left it. 'I alone am answerable for all its state-

[1] *Life and Times of Henry, Lord Brougham, written by himself* (Blackwood.)

ments, faults, and omissions. I will have no editor employed to alter or rewrite what I desire shall be published as exclusively my own.' The injunction has been only too faithfully complied with.

It is needless to say that I have drawn largely on the store of 'Broughamiana,' contained in the Creevey Papers and the Diaries of Charles Greville. It must be admitted, I am afraid, that Brougham's reputation is not enhanced by them, and the successive records which leap to light, both there and elsewhere, render intelligible the ostracism of which he became the victim in the very prime of his splendid faculties.

The sources of information concerning Lord Brougham are superabundant, in quantity, at any rate, if not in quality; the material for biographies of Lord Cottenham and Lord Truro hardly exists at all outside the Law Reports, the pages of Hansard, and the legal periodicals. I have indicated my authorities where practicable, and I would express my thanks to the Hon. Walter Pepys for kindly communicating to me some circumstances connected with the tastes and recreations of his father the Chancellor, which should serve to correct the commonly accepted belief. My thanks are due also to Lord Annaly for granting permission for the reproduction of his picture of the interior of the House of Lords during the proceedings against Queen Caroline.

J. B. A.

Lincoln's Inn,
March 1906.

CONTENTS

LORD LYNDHURST

CHAPTER		PAGE
I.	The Life of Lord Lyndhurst to the Date of his first entering Parliament, 1772–1818	1
II.	Lord Lyndhurst as Law Officer and Master of the Rolls, 1818–1827	23
III.	Lord Lyndhurst's First Chancellorship—Catholic Emancipation, 1827–1830	49
IV.	Lord Lyndhurst as Chief Baron—Parliamentary Reform, 1830–1832	75
V.	Lord Lyndhurst in Opposition—his Second Chancellorship, 1833–1835	100
VI.	Lord Lyndhurst in Opposition Again—Chancellor for the Last Time, 1835–1846	125
VII.	The Latter Days of Lord Lyndhurst, 1846–1863	149

LORD BROUGHAM

CHAPTER		
VIII.	Life of Lord Brougham down to his Entry into Parliament, 1778–1810	168
IX.	Lord Brougham's Career at the Bar and in Parliament down to the Death of George III., 1810–1820	187
X.	The Story of Queen Caroline from her Marriage to the Introduction of the Bill of Pains and Penalties, 1795–1820	214
XI.	The Bill of Pains and Penalties—Death of Queen Caroline, 1820–1821	240
XII.	Career of Lord Brougham from the Death of Queen Caroline to his Appointment as Chancellor, 1821–1830	264
XIII.	Lord Brougham's Chancellorship down to the Passing of the Reform Bill, 1830–1832	293
XIV.	Lord Brougham's Last Days as Chancellor, 1833–1834	314
XV.	Lord Brougham's Exclusion from Office—His Feud with the Whigs, 1835–1846	340
XVI.	Lord Brougham's Latter Days, 1846–1868	364

LORD COTTENHAM

CHAPTER PAGE
XVII. Life of Lord Cottenham down to his Appointment as Chancellor, 1781–1836 379
XVIII. Lord Cottenham's Two Chancellorships, 1836–1851 395

LORD TRURO

CHAPTER
XIX. Life of Lord Truro to his Appointment as Solicitor-General, 1782–1839 417
XX. Life of Lord Truro from his Appointment as Solicitor-General to his Death, 1839–1855 . 437

INDEX 457

PORTRAITS

LORD LYNDHURST . . . . . *Frontispiece*

INTERIOR OF THE HOUSE OF LORDS DURING THE DISCUSSION OF THE BILL OF PAINS AND PENALTIES *To face page* 240
From the painting by Sir George Hayter in the National Portrait Gallery, by kind permission of Lord Annaly.

HENRY BROUGHAM, ESQ., M.P. . . . . ,, 248
Sketched by A. Wivell, 1820.

SIR JOHN SINGLETON COPLEY . . . . . ,, 252
(*afterwards Lord Lyndhurst*). *Sketched by A. Wivell*, 1820.

A LATE SCENE AT HOUNSLOW AT THE SIGN OF THE *RED LION* . . . . . ,, 312
From a sketch by H. B.

LORD COTTENHAM . . . . . ,, 394
After a lithograph by K. J. Stothard

T. WILDE, ESQ., Barrister-at-Law . . . . ,, 424
Sketched by A. Wivell 1820

THE VICTORIAN CHANCELLORS

CHAPTER I

THE LIFE OF LORD LYNDHURST TO THE DATE OF HIS FIRST ENTERING PARLIAMENT

1772–1818

JOHN SINGLETON COPLEY, Baron Lyndhurst, and three times Lord Chancellor of England, was born at Boston in the province of Massachusetts on May 21, 1772, and died in London on October 12, 1863. When, as a two-year-old infant, he first quitted the land of his birth, the North American colonies were part of the dominions of King George. As he lay on his death-bed the War of Secession was at its height, and the fate of the Union was still trembling in the balance. He was a third-year man at Cambridge when Louis XVI. perished on the scaffold; he was called to the Bar the year before Trafalgar; and he was Solicitor-General when Queen Victoria was born. As was written of him by no friendly critic,

> to the very extremity of a protracted life he both looked, and was, a great man. It is very natural that such a man should have lived till his career should be half a myth or a legend.[1]

The growth of that myth owes much to the pen of Lord Campbell, nor does the legend find an entirely satisfactory

[1] Bagehot, *Biographical Sketches*, 334.

solution in the pleasant pages of Sir Theodore Martin. 'What Lord Lyndhurst really was,' to quote Mr. Bagehot again, 'is still a mystery to the generations which have grown up since he passed away full of years and honour.'

His father, also a John Singleton Copley, was born in Massachusetts in 1737, of parents who had sailed from Limerick only the year before. In 1769 he married Susannah Farnum Clarke, daughter of a Boston merchant. Mr. Clarke has a niche in history as the consignee of the tea chests which were emptied into Boston harbour on December 16, 1773, by a band of patriots disguised as Mohawk Indians. Long before their marriage Copley, though entirely self-taught, had established his reputation as the most successful portrait-painter in the American provinces, and his famous picture of the 'Boy with the Squirrel' had been exhibited in London.

The Clarkes were fervent loyalists, who remained staunch to the King through all the vicissitudes of the War of Independence, but Copley gauged the spirit of his countrymen at a very early stage in the conflict. The news of Lexington and Bunker's Hill reached him in Italy where he was making a pilgrimage through the galleries of Rome and Venice. And there he learnt that his wife, to whom Boston was no longer a tolerable place of residence, had crossed the Atlantic and was in London with the young John Singleton and her daughters. The artist joined them at the end of the year, and after a short interval the family were established at 25, George Street, Hanover Square, which was destined to be Lord Lyndhurst's home down to the hour of his death.

The elder Copley is best known by his historical paintings, of which the death of Major Peirson,[1] and the fatal swoon of Lord Chatham in the House of Lords, are perhaps the most celebrated. But he did not abandon portraiture, and visitors to the exhibition of 1862 may

[1] Killed at St. Helier's, Jersey, January 6, 1781, in repelling the attack of the French. The future Chancellor figures in the picture as a boy dressed in green running by his nurse's side.

remember a group, painted shortly after the flight from America, depicting the artist himself, his father-in-law, his wife, and his four children. Mrs. Copley was a woman of no ordinary gifts, both mental and bodily. Her beauty was the least of her charms; amiable, generous, and tender-hearted, she inspired her children with an affection that only strengthened with the flight of time, and her never-failing cheerfulness helped to lighten the gloom and disappointments of her husband's later years.

Under normal conditions Copley ought to have amassed an ample competence from his art. But during the French war commissions fell off and prices ruled low. His departure from America had resulted in the loss of a valuable property in Boston, and a cloud of debt and embarrassment settled down upon him from which he was only partially extricated by the generosity of a son-in-law and the exertions of his son.

John Singleton the younger was educated at a large private school at Chiswick, kept by the Rev. Thomas Horne, a good classical scholar, but not free from some infirmities of temper.[1] Here he remained till July 1790, when he entered as a pensioner at Trinity College, Cambridge. Being already destined for the Bar, his father's choice had at first fallen on Trinity Hall, which was then the only foundation that professed to instruct students in the law. But a chance stage-coach acquaintance on the journey from London, Dr. Gretton, afterwards Dean of Hereford, persuaded the elder Copley of the transcendent merits of his own college, Trinity, and the die was cast.[2] We are reminded of the budding Freshman who is said to have emerged from Cambridge station with a query to the nearest cab-driver, 'What is the college the gentlemen usually go to?' But to this

[1] He was the father of Sir William Horne, Attorney-General 1830–3. See the reminiscences of Lord Kingsdown (Mr. Pemberton Leigh), who was there at a somewhat later date.

[2] Sir Theodore Martin, *Life of Lord Lyndhurst*, 21 and 22 n.

accident Lord Lyndhurst attributed his whole future career.

Of his university days only a few traditions survive. There is a story[1] of a college dinner held at Bourne Bridge at which Copley was present, when one of the guests grew so riotous in his cups that he was forcibly carried out and locked into a bedroom on the third floor, from which he leapt to the ground without sustaining any injury. And Crabb Robinson relates, on the authority of Serjeant Rough,[2] that the two, together with a future bishop, whose name had escaped the Serjeant's memory, were once chased through the streets at night by the proctor for chalking up on the wall 'Frend for ever.' William Frend was Copley's private tutor in mathematics, and his sympathies with the early French revolutionists cost him his fellowship at Jesus after a series of highly oppressive proceedings in which the undergraduates, irrespective of politics, were for him against the authorities. Another Trinity contemporary of Copley's declares that he was eloquent in favour of 'the friends of freedom across the water,' and that in festive gatherings he used to fill his glass to the Sansculottes.[3] We have here the genesis of 'Jacobin Copley.'

At Chiswick he had been well grounded in the classics, and at college he flung himself, though not until the commencement of his third year, into those mathematical studies which afforded the most conspicuous opportunity for distinction by the banks of the Cam. He had showed marked aptitude for mechanical science, and his grasp of mind and great powers of memory were even then remarkable. Late in life he recalled to the House of Lords a little story which illustrates his gifts of self-command and self-absorption.

[1] Henry Gunning, *Reminiscences of Cambridge*, i. 247.

[2] *Diary of Henry Crabb Robinson*, iii. 402. Another legal luminary in the person of Bolland was also at Trinity with Copley, who in later years made him a Baron of the Exchequer.

[3] *Solicitors' Journal*, October 17, 1863.

I recollect many years ago, when I was studying in chambers, having a neighbour who was learning to scrape on the violin. I was at first disposed to complain of my neighbour's innocent pastime as an annoyance, but, on a little reflection, I said to myself, 'Is it wise in me to object? Let me see whether I cannot stand it without distraction. If I can, what an admirable discipline it will be to me in pursuing my mathematical studies!' After a time I ceased to hear the 'nuisance,' as it was called; it made no impression on me.[1]

On January 17, 1794, he graduated Second Wrangler [2] in the examination for the Bachelor's degree. A few days later he was elected Smith's Prizeman, a distinction bringing as its reward 25*l.* in cash, an agreeable aid towards the discharge of those 'thousand little ticks' which, as he writes to his father, 'show their heads when they think it may be the last time of meeting.' [3] And, side by side with these contests open to the whole University, he had been engaged in the annual college examination which was to determine his fitness for a foundation scholarship, an ordeal from which he emerged successfully.

Though his life at Cambridge was necessarily a studious one, he appears, as we have seen, to have mixed freely with companions of his own age and to have indulged in the recreations of the pre-athletic era. 'Sometimes,' he wrote to his mother, 'I stroll into the coffee house to sip my tea and read the papers by the way, or to write more elegantly, *à propos*.' And he enumerates among articles left inadvertently in George Street a pair of small knee buckles, Aristotle's 'Poetics' translated by Pye, and his foils.[4] The reference to Aristotle is proof, if proof were needed, that Copley did not confine himself to the prescribed curriculum of mathematics, Locke, and moral philosophy. From Professor William Farish he gained a taste for experimental

[1] Hansard, cxlix. 1929 (April 29, 1858).

[2] The Senior Wrangler was Butler, of Sidney Sussex, afterwards Dean of Peterborough.

[3] Martin, 32.

[4] *Id.* 26.

chemistry which never left him. The Greek and Latin poets were his perpetual solace and delight, and a few months before his death he engaged in a keen discussion with Mr. Gladstone over the latter's version of the first book of the 'Iliad.' [1]

In the Michaelmas term of 1794 he won the prize awarded annually at Trinity for an essay on the character and memory of William III., which in another generation inspired Macaulay with the dream of his grand Whig Apologia. On October 2 in the following year he was elected to a Trinity Fellowship at the first time of asking, and a strain was thus removed from the family finances, which had been severely tried by his maintenance at the University.

A few weeks earlier (August 10, 1795) he had received from the University the appointment of Travelling Bachelor on the Worts foundation, which carried with it a 'pension' of 100*l.* a year for three years, conditional on the holder transmitting to the Vice-Chancellor an account in Latin of his travels.[2] In April 1796 he embarked upon a long projected tour to the United States. There were many friends and relatives with whom Mr. and Mrs. Copley were anxious to come into touch once more, but the main object of their son's visit was to ascertain whether the Beacon Hill estate in Boston had indeed been alienated from the family beyond recall. This, unhappily, proved to be the case, and the utmost which he could do was to secure the sum of 4,000*l.* by way of compromise. It was a crushing blow to the artist, and with it disappeared whatever desire he may have cherished of passing the remainder of his days in affluence upon American soil, with a more appreciative market for the works of his hand and brain.

[1] Martin, 503.

[2] The travelling bachelorships were abolished in 1861, and the funds are now expended in grants for the encouragement of investigations in foreign countries, for geographical discovery, or for antiquarian or scientific research abroad.

In 1797 the Travelling Bachelor returned to England. His letters to the Vice-Chancellor, Dr. Bellward, are 'extant and written in very choice Italian' [1]—that is to say, they bear the characteristics of an age when Latin was still the medium of controversy and correspondence between scholars of all nationalities, and when Latin composition was the hall-mark of anyone with pretensions to polite learning. Though he had made a very comprehensive tour through the Northern States and found warm friends and that abundant hospitality for which our kinsmen across the Atlantic were then, as now, conspicuous, Copley seems to have seen nothing to attract and much that was repellent in republican institutions. 'I have become a fierce aristocrat,' he wrote to his mother from Philadelphia on April 20, 1796. 'This is the country to cure your Jacobins. Send them over and they will return quite converted.' [2] But he never ceased to cherish affection for the land of his birth, and he retained an interest in American institutions and American politics to the day of his death. When he was once asked what was the most interesting day in his long life he replied, without hesitation, the day spent at Mount Vernon with Washington.

On July 5, 1797, he took his M.A. degree and settled down to prepare himself for his profession. Then, as to-day, success at the University was regarded as the certain precursor of success at the Bar, and within a few months of his triumphs in the Senate House he had been admitted as a student at Lincoln's Inn (May 19, 1794). But it was not until his return from America that he was initiated into the mysteries of special pleading by Mr. Tidd. The name of that great practitioner has been immortalised by Uriah Heep; it will recur more than once in these volumes, for three of the Victorian

[1] They are printed in W. H. Bennett's *Select Sketches from the Notebook of a Law Reporter*. The originals are in the Cambridge University Library.

[2] Martin, 46.

chancellors, Lords Lyndhurst, Cottenham, and Campbell, as well as Lord Chief Justice Denman, were among his pupils, and the dingy chambers in King's Bench Walk are famed as a veritable nest of legal singing birds.

Prior to entering Tidd's chambers, we are told by Sir Theodore Martin that Copley went through 'the usual preliminary studies.' There is so little anecdotic record of the early days of Lord Lyndhurst that one is inclined to clutch at straws, and a passage in Samuel Warren's novel, 'Ten Thousand a Year,' throws a good deal of light upon the preliminary stages of Copley's career in the law. Of his identity with Sir Charles Wolstenholme, the Attorney-General in that veracious chronicle, there is no room for doubt, and it may be remembered that when the unlucky Aubrey, disseised of his Yatton estates, resolves upon trying to retrieve his fortunes at the Bar, he turns to his friend and former counsel for advice.

Undoubtedly, said the Attorney-General, the acquisition of the technical knowledge will be for some little time rather troublesome; but a twelve months' steady study by a man who is in earnest and accustomed to work will make a vast inroad in it. Everything you master, you see, helps to master so much more. Three years' serious application to the law, by a man like you, will place you far ahead of the bulk of the men at the Bar. Besides 'tis not the study but the *practice* of the law that teaches law most effectually. Always have an eye to principle, and resolve thoroughly to understand the smallest details; and it will be a wonderful assistance in fixing them for practical use in your mind, to learn as much as you can of the reasons and policy in which they originated. You'll find Reeves' 'History of the English Law' of infinite service to you; I should read it in the evenings; 'tis full of interest in every point of view. I read every word of it, very carefully, soon after I left college; and, by the way, I'll tell you another book by which I did the same, 'The State Trials;' ay, by Jove, Aubrey, I read every word of them—speeches, examinations, cross-examinations of witnesses, reply and summing-up. That's where

I first learned how to examine and cross-examine a witness. Consider: the counsel employed were, you know, generally first-rate men, and exerted themselves, on such occasions, to the utmost. And there you also learn a great deal of *constitutional* law. You ask how I get through so much? To be sure, one has enough to do, and I'm afraid I neglect a good deal; but the great thing is *attention*, and to *one thing* at a time. The sun's rays scattered are comparatively powerless; condense them, they are irresistible; but all this you know as well as I do. Certainly, law is difficult; but its difficulty is often greatly overrated, especially by imperfectly educated and ill-disciplined, *quick*, *sharp* men. *You* will find it a very different matter. What is wanted is a clear head, a good memory, strong common sense, an aptitude for analysis and arrangement; before these combined, the difficulties of law fly like the morning mist before the sun. Tact with the court and jury is acquired by practice, to a considerable extent, in the absence even of natural endowments. . . . You must make up your mind to wait a little; you can't get into a great business by a hop, step, and a jump, believe me. Certainly I have no cause to be dissatisfied; I've done pretty well; but I can tell you that eight years passed over me before I earned enough a year to pay my laundress. With me accident supplied the place of *connection*; but only suppose how I must have worked in the meantime to be able to do business when it came to me. I know it's said that I was always an idle man; but people were a good deal mistaken about that matter, I can promise them! What idiots indeed to suppose such a thing! Why, my very first start lifted me into a business of a thousand a year; and in the name of common sense how could I have got through it if I hadn't worked beforehand? . . . As to books? Oh! why—I suppose you've looked into Blackstone? He's a fine fellow, Blackstone, and deserves all that has been said in his praise. Many think that he's only to be glanced at, at the beginning of their studies; never believe it! He's good to the end of the chapter! I've a profound respect for Blackstone; it's the only book I've read four or five times through—ay, from cover to cover; he makes law lovely! Stick to Blackstone by all means! Reeves—oh, I mentioned him, you know. Then I should go, I think, to

Coke on Littleton; but we shall have several opportunities of talking over these matters.

Though the passage smacks somewhat of the author's own 'Popular Introduction to Law Studies,' there is strong internal evidence that it represents a real conversation between Lord Lyndhurst and some earnest neophyte, and we may fairly accept it as a fragment of the Chancellor's autobiography.

It was with the acquisition of strictly technical knowledge that Copley was concerned during his sojourn in the chambers of Mr. Tidd, and there he acquired the mysterious learning which surrounded the written proceedings in an action at law, the declaration, the plea, the replication, the rejoinder. But he also took a leading part in the famous society which met weekly in Tidd's chambers for the discussion of juridical problems. It consisted of the pupils for the time being and any former pupils who chose to attend, and the debates were limited to questions of law.[1] Campbell relates that Copley argued most admirably, but that his fault, 'which afterwards he corrected,' was being too loud and declamatory; and he adds a story of his waxing so long and vehement over the law of libel that the porters and laundresses collected round the window in King's Bench Walk, and finally the Temple fire-engine was sent for.[2] Tidd's pupils do not seem to have suffered from want of the imaginative faculty.

Copley was also a member of the 'Academical' in Bell Yard, a society to which Brougham and Campbell also belonged at a later date, and where the subjects of discussion were unrestricted.

By continual and repeated practice at the societies of mock debate, he wrote to his brother-in-law, I think I have also acquired, what is not less essential than a knowledge of the laws, some degree of ease and fluency of expression.[3]

[1] *Vide infra*, 384.

[2] *Life of Lord Campbell*, i. 140; Campbell's *Life of Lyndhurst*, 13.

[3] Martin, 100.

At the end of a year with Tidd he had made himself sufficiently proficient to start practice as a special pleader. The rule restricting practice 'under the Bar' to persons qualified to be called had not yet been made by the Benchers, and the only requisites were membership of an Inn of Court and the payment of a licence of 10*l.* a year as a contribution to Pitt's war budgets. Fees were low, the rule by which 1*l.* 3*s.* 6*d.* was fixed as the barrister's irreducible minimum did not prevail, and though the status was not regarded with favour, it was a recognised method both of earning money and of attracting clients. 'It is easier,' wrote Campbell, 'to get this kind of business than briefs in the Court, and you thus gradually form and extend your connection.' But it was not an enlivening occupation; 'low illiberal drudgery,' he calls it in a moment of candour or spleen.[1] And to follow it for four or five years, as Copley forced himself to do, was a proof of his determination to 'call nothing common or unclean' which would qualify him for his profession, as well as an indication of the narrow circumstances which served him as an incentive. He obtained a precarious addition to his income by occasionally going Marshal with Baron Graham,[2] the two circuits bringing in about 100*l.*, but beyond his Fellowship, worth 150*l.* per annum, he had no private resources; and though there was always the shelter of the parental roof in George Street, the demand for his father's pictures was lessening year by year, and the household fortunes were evidently on the wane. To continue indefinitely under the Bar, and sink permanently into the same class as Tidd and the others, was intolerable. To be called, and to face the inevitable years of waiting without a shilling in his pocket, was an equally desperate alternative. His fellowship would expire in 1804, unless he

[1] *Life of Lord Campbell*, i. 149.

[2] Sir Robert Graham, who was a member of the Court of Exchequer from 1799 to 1827, had been Third Wrangler and Fellow of Trinity, to which fact Copley may have owed the appointment.

were by that time in Holy Orders, a step which Connop Thirlwall actually took, in disgust at his legal prospects, and which Copley is said to have seriously contemplated.

The generosity of a relative allowed of his following the bent which his genius had marked out for him. In the year 1800 his eldest sister had married Mr. Gardiner Greene, a well-to-do merchant of Boston, U.S. To him the elder Copley turned in the hour of need with a request for the loan of a thousand pounds. The money came by the next mail, and it was now possible for John Singleton the younger to enter upon his real vocation. He acknowledged the obligation in a frank and manly letter,[1] and on June 18, 1804, he was called to the Bar.

Having no local interest in any part of England, he joined the Midland Circuit, as being the shortest and least expensive, and attached himself to the Lincolnshire and Nottingham Sessions. It was the circuit which Romilly had chosen twenty years earlier for a similar reason. The leader was Serjeant Vaughan, afterwards Baron of the Exchequer, and two years later the Circuit mess received a notable addition in the person of Thomas Denman, the future Lord Chief Justice. He and Copley were frequently pitted against one another, but the warm friendship of Circuit days was not proof against the dislike with which Denman at a later date chose to regard the politics of his early rival.

Copley's first guinea was earned at Kesteven Sessions, and he had not long to wait before business came. The weary years to which he used afterwards to refer must have been those prior to his call when he sat in Essex Court waiting for declarations to draw. Removed now to pleasant chambers in Crown Office Row, open to the gardens and river, he soon began to acquire a respectable practice. In February 1807 his prospects were regarded in the family as removing all cause for anxiety,[2] and year by year they steadily improved. Yet it was slow progress, and to a man of his ability it must have seemed

[1] Martin, 100. [2] *Id.* 112.

a poor reward for all the energy he had expended. A veteran law reporter [1] describes him

> sitting in the old Court of Common Pleas, always occupying the same seat at the extremity of the second circle of the Bar, without paper or book before him, but looking intently—I had almost said savagely (for his look to me at this time bore somewhat the appearance of that of an eagle)—at the Bench before him, watching even the least movement of a witness or other party in the cause, or treasuring up the development of the legal arguments brought forward by the eminent men who then formed the inner circle of the Bar of learned serjeants.

He was even considering whether he should not abandon Circuit, on the ground that the briefs did not cover his out-of-pocket expenses, when at last his chance came. The same tide of depression and poverty which deprived the elder Copley of a market for his pictures had reduced the stocking-makers of the Midlands to utter destitution. The Luddites rose in Nottingham and Derby to break the machinery which had thrown so many of them out of employment. There was much destruction of property and fierce rioting, which was not quelled until 3,000 soldiers had been called out, and in March 1812 Copley found himself retained for one of the rioters, John Ingham, who was charged with sending threatening letters to his employers. The offence was a capital one, and the Judges were in no merciful mood.[2]

On the facts there was no defence, but counsel took objection to the indictment with one of those quibbles which, by long-standing tradition, were allowed to mitigate the horrible severity of our penal laws. The persons threatened were described in that instrument as 'proprietors of a silk and lace cotton manufactory,' but it appeared from the manager's evidence that they were

[1] Bennett, 197.

[2] By a recent statute, 52 Geo. III., c. 16, 'frame-breaking' in itself had been rendered capital. It was against this Bill that Lord Byron delivered his maiden speech in the House of Lords.

proprietors of two separate factories, one for silk lace, the other for cotton lace. Copley urged that this was a material fact, and being wrongly set out in the indictment was sufficient ground for quashing it. His argument convinced the Court, and Ingham went his way rejoicing, while the mob strove to carry his defender shoulder high to the hotel.

The achievement was not a very remarkable one, and had it happened at a place where popular feeling was not deeply roused it would have stood Copley in no better stead than any lucky verdict snatched from a common jury. Coming as it did, it just served to bring him into public notice and give the opportunity which was all he needed. From that hour there was no going back; the Nottingham attorneys rallied round him, his practice went up by leaps and bounds, and in the following year he felt justified in assuming the dignity of Serjeant-at-Law. On the last day of Trinity Term 1813, he duly 'counted' in open court;[1] his rings, bearing the motto 'studiis vigilare severis,' were carried round by his 'colt' to the Judges and the other members of Serjeants' Inn, and the occasion was celebrated with a supper party given in his honour by Serjeant Rough, at which Crabb Robinson the diarist was present.

Though his reputation as a sound and painstaking advocate was confirmed and extended, Mr. Serjeant Copley's first years in the Court of Common Pleas were uneventful. The most memorable example of his thoroughness is the well-known case of Boville *v.* Moore,[2] in which the defendants, for whom he was retained, were sued for infringing a patent for a spinning jenny. As became a Wrangler and Smith's Prizeman, he had always been interested in mechanics, theoretical or applied. His brief was not sufficiently explicit, and he spent the Sunday before the trial in Mr. Moore's manufactory at Nottingham mastering the minutest details

[1] For the ceremony of counting, vide *infra*, 426.

[2] Davies's *Patent Cases* (1816), 361, and Martin, 123.

of the machinery till he was able to sit down at the frame and turn out a creditable specimen of bobbin lace. At the hearing Copley gave a repetition of this feat before the Court, and he was successful in proving that it was the plaintiffs themselves who were guilty of infringement. The tables were completely turned, and the defendants, on the strength of a special finding to this effect, were able to levy royalties on a large number of jenny-owners who, without acknowledgment, had appropriated the fruits of Mr. Heathcote's ingenuity.[1]

Outside the members of the Bar, by whom he was already regarded as a man destined for high promotion, Copley's fame had scarcely penetrated. He was the hero of no *causes célèbres*, of no tempestuous passages with the Bench such as illumined the early career of Erskine, and Law, and Brougham, nor had he the qualities which brought Best and Garrow before the public eye. His gifts were those which appeal to the members of his own profession.

His mind, says Samuel Warren, was distinguished by its tranquil power. He had a rare and invaluable faculty of arraying before his mind's eye all the facts and bearings of the most intricate case and contemplating them, as it were, not successively but simultaneously. His perception was quick as light ; and at the same time—rare, most rare accomplishment—his judgment sound, his memory signally retentive.

'He was never a brilliant or showy advocate,' wrote Abraham Hayward, himself one of her late Majesty's counsel.

His strength lay in his clear, strong, subtle intellect, his highest forensic qualities were of the judicial order, and his want of early popularity among the dispensers of briefs was

[1] When both were far advanced in years, Sir John Heathcote, then Palmerston's colleague in the representation of Tiverton, took occasion to remind Lord Lyndhurst of the trial. 'Ah,' said the old man, 'now, were not the points of resemblance So-and-so ?' and step by step he went back through the whole mechanism.

in great measure accounted for by the friend (Sir Samuel Shepherd, we believe) who remarked that he had no rubbish in his head.[1]

Meanwhile steady, remunerative business on Circuit and in the Common Pleas kept him amply occupied without overtasking him. From politics he stood severely aloof, and the demands of his clients made him sever himself more and more from the pleasures and dissipations of society. And during these years things had gone from bad to worse in George Street. In 1815 the elder Copley died, leaving his affairs heavily embarrassed.

When the whole property is disposed of and applied towards the discharge of the debts, wrote Mrs. Copley, a large deficiency must, it is feared, remain. My son has of late years advanced all that he could spare, beyond what was necessary for his own immediate subsistence, and has not been able to lay up anything, which caused me and my departed husband very anxious solicitude. I cannot, therefore, now look to him for anything more than the support of myself and my daughter Mary ; but it is impossible to express the happiness and comfort that we experience from so kind and affectionate a friend.[2]

And the widow added that her husband had blessed God at the close of his life that 'he left the best of sons for my comfort, and for that of my dear Mary the best of brothers.'

But the great crisis in his affairs was at hand. On December 2, 1816, there had been a serious riot in the City of London, emanating from a disorderly assemblage in the Spa Fields. It was suppressed with little difficulty, though not before mischief had been done and blood had been shed. The ringleaders, men of little mark, 'two broken-down apothecaries, a broken-down gentleman, and two cobblers,' were speedily laid by the

[1] *Quarterly Review*, cxxvi. 11.
[2] Martin, 119.

heels, and proceedings for riot and sedition were set in motion against them. But information reached the Government, from a dubious and tainted source it is true, that the disturbances which had been nipped in the bud were intended as the first step in a planned rising. The consequent resolution to prosecute on the charge of high treason has been loudly condemned both as an abuse of power and as a gross error in judgment. But it is to be remembered that the 'broken-down gentleman' was Arthur Thistlewood, who four years later was the prime mover in the Cato Street Assassination Plot; the evidence, moreover, shows that the conveners of the meeting had in contemplation a programme hard to be distinguished from armed insurrection; and arms, of a sort, actually were distributed to the rioters.

On Monday, June 9, 1817, the prisoners were arraigned at the bar of the King's Bench before Lord Ellenborough, L.C.J., and three puisne judges; the full strength of the Crown lawyers was mustered against them, while for Watson, whose case was taken first, there had been retained 'the eccentric exuberance of Wetherell and the luminous energy of Copley.'[1] It was assuredly the strangest team that had been yoked together since Kenyon and Erskine shared between them the defence of Lord George Gordon.

Sir Charles Wetherell, as he afterwards became, that weird and unwashed sibyl, has come down to posterity as the beau ideal of the stern unbending Tory. A highly successful advocate in Chancery, where he had lately been advanced to the rank of King's Counsel, he combined a dash of genius with an 'originality' that was at times hardly consistent with sanity. At this moment he was smarting under the double disappointment of seeing his claim to the vacant law offices disregarded in favour of

[1] *Law Review*, v. 142. Crabb Robinson, who was present at the trial, remarked that Watson had a face much resembling Serjeant Copley in profile.

Shepherd and Gifford; and the prospect of meeting his rivals face to face, and at the same time teaching a lesson to an ungrateful ministry, was irresistible. He intimated to Watson and Thistlewood, through the medium of a certain Larry Bryant, that he was anxious to defend them. The offer was accepted, and he stipulated that Serjeant Copley should be associated with him, though the suggestion may possibly have originated in the brain of a shrewd attorney searching for some one to make good Wetherell's notorious defects.

The evidence of treasonable conspiracy rested solely on the testimony of one John Castle, who had turned King's evidence and was strongly suspected of having acted throughout as an *agent provocateur*. He was proved to have been the plotter and contriver of most of the overt acts, and Stafford, the Bow Street officers' clerk, had given him money to send away his wife, who might otherwise have been called as a witness to confirm or destroy his testimony. Demolish Castle and the case for the Crown vanished into air; there could be no conviction unless he was believed, the other links in the chain were merely corroborative. And against Castle and against the whole system of espionage Wetherell directed his energies with a vigour and a *verve* that have never been surpassed. Not all the force of the law officers and the four judges could hold him within bounds; he showed scant respect even for the grim Ellenborough. Throughout the whole trial he was in constant collision with some one or other. He accused Shepherd of intentional misrepresentation, he openly flouted Gurney, and he allowed protests and interruptions from the Bench to pass over him like water from a duck's back. He attacked Castle in a cross-examination [1] which furnished Dickens with the model of a famous scene in 'A Tale of Two Cities.' He traced his career of crime from one circuit to another. He depicted him as a bigamist and as the bully in a house of ill-fame, standing.

[1] *State Trials*, xxxii. 284–327.

now, in court, dressed in the coat, waistcoat, and breeches of the Crown, with which the Bow Street runners had provided him.

Yet, when it came to Wetherell's turn to address the jury on the following morning, he seemed under eclipse. He wearied the court and jury with a long rambling speech, during the progress of which Copley showed evident signs of uneasiness. Suddenly, as if conscious of his failure, he exclaimed in an audible voice, 'By God, this will never do!'[1] and dashed with all his former animation into the heart of the case, and into a vitriolic denunciation of Castle. 'Gentlemen,' he asked the jury, 'will you suffer four human beings to be immolated upon the evidence of that—that—that *indescribable* villain?'[2]

After a dozen witnesses had been called Copley proceeded to sum up for the defence. It was no mere work of supererogation, for the Crown had the last word, and it was anticipated, as proved to be the fact, that Lord Ellenborough would charge strongly for a conviction. During the whole conduct of the case the Serjeant had shown tact and pertinacity in dealing with the witnesses, great readiness in argument, and a perfect combination of firmness and respect in his demeanour towards the Bench. He was now to reveal himself as a master of lucid statement and of the highest type of advocacy.

[1] This is, I believe, the only veracious touch contained in a wild story from the *Edinburgh Review*, cxxix. 562, the details of which are pitilessly dissected by Sir Theodore Martin (*Life of Lyndhurst*, 134). The reviewer professes to narrate, on Copley's own authority, how his whole future prospects were within an ace of utter ruin by the sudden collapse of Wetherell, how, 'with the habitual indolence of his nature,' he had put off all preparation for his speech, how he had found himself suddenly called upon 'with his brain in a state of whirl,' to follow his leader, and how the latter, after he had actually sat down, sprang up with the words I have quoted and 'declaimed for the whole of that day and half the next.' The incident is a warning to those who tell legal anecdotes from memory; and see *Law Review*, v. 145 n.

[2] Could Dickens be thinking of this when he makes Micawber exclaim, 'Approach me again, you—you—you HEEP of infamy, and if your head is human I'll break it'?

His speech [1] has always been regarded as a model of correct and classical eloquence, abounding in topics to work upon the prejudices or feelings, and Campbell, who heard it 'with great delight,' considered it one of the ablest and most effective ever delivered in a court of justice. From a close chain of reasoning on evidence it is difficult to select isolated passages, but, as one of the few survivals of Copley's eloquence at the Bar, the closing sentences may be preserved :

I have been addressing myself hitherto merely to the charge of levying war against the King, but in that I have throughout taken into consideration the intention and object of the parties as the main ingredient in the case; in so doing therefore I have in effect considered the whole question. For if you are of opinion that war was not levied, can you believe, upon the evidence you have heard, that there was a conspiracy to levy war in order to put the King to death ? If not, then, do you believe that there was a conspiracy to levy war for the purpose of deposing the King ? If there was no conspiracy to levy war against the King, there could not be a conspiracy to levy war in order to depose the King. Was there, lastly, then, a purpose to levy war to oblige the King to change his measures ? If there was no conspiracy to levy war against the King there could not be a conspiracy to levy war in order to compel the King to change his measures. These are the different charges against the prisoner at the bar. In all, the arguments and observations are the same, and they receive the same refutation ; and though I at first thought it might be necessary to examine in detail each of these allegations, and that this might branch out into a variety of enquiries, in consequence of the different nature and complexity of the charges ; yet, in the way in which I have considered the subject the whole resolves itself into the question to which your attention has been so often directed—whether there was a fixed and settled plan formed by these six individuals, without means and without connection, to subvert the government ; and whether what was done by them was done in prosecution of such plan. It

[1] *State Trials*, xxxii. 500.

is impossible to believe it; there is no credible evidence to support it.

I have finished; your attention must be fatigued and exhausted. Let me then conclude by fervently praying that that Providence which enlightens the minds of men and pours the spirit of truth and justice into their hearts will dispense that light and spirit to you in discharge of the great duty which is now cast upon you.

Gifford, the Solicitor-General, replied for the Crown in what is called a 'hanging speech.' Lord Ellenborough told the jury that they had before them a body of cogent evidence in proof of the design charged against the prisoner. After an hour and a half's deliberation they found Watson not guilty, and the prosecution decided to offer no evidence against the other prisoners. Wetherell's *amour propre* was appeased, and Copley had proved himself one of the foremost men at the Bar.[1] It was not long before he received official recognition of the fact.

On July 26 the Derbyshire grand jury found a true bill against Jeremiah Brandreth and some forty other stocking-makers who, driven desperate by misery, had participated in what was an unmistakable case of 'levying war upon the King.' A special commission was sent down to Derby in October to try them, and Copley received for the first time a retainer from the Crown. Small use, however, was made of his services during the trials. It was apparent that the object of Government was to close the mouth of so formidable a champion, and, in Denman's words, to deprive the prisoners of

the talents, the zeal, the eloquence, and the useful experience of my learned and excellent friend, Mr. Serjeant Copley.[2]

But he was destined for higher things than an occasional Treasury brief on circuit. The Ministry were looking

[1] Ribbons stamped with 'Copley and Liberty' were freely worn at the buttonhole by the London Radicals, a somewhat embarrassing form of popularity in the immediate future.

[2] *State Trials*, xxxii. 1061.

out for likely parliamentary recruits; their attention had been directed to Copley, and he was requested through a common friend to call on Lord Liverpool, who told him that if he wished to come into Parliament a seat was at his disposal; no pledge was required or condition imposed. The Premier begged him to take time to consider the proposal, but Copley had no hesitation, and on March 28, 1818, he was returned for Yarmouth in the Isle of Wight *vice* Alexander Maconochie, raised to the Court of Session as Lord Meadowbank.

CHAPTER II

LORD LYNDHURST AS LAW OFFICER AND MASTER OF THE ROLLS

1818–1827

THE entrance of Serjeant Copley into Parliament as member for a Treasury borough has been made the foundation for persistent accusations of political profligacy.[1] He has been placed on a pinnacle of infamy with Wedderburn and the unhappy Charles Yorke, and ranked with Wentworth among the grand apostates. The charge is all the more remarkable from the fact that he had hitherto abstained from all participation in public affairs, that he had never contested a borough or made a speech on a public platform, and that he had never sought or frequented the society of politicians and statesmen. Yet, undeniably, the suspicion of having abandoned his early creed from motives of ambition hung over him to the close of his life, and has left its traces on the generally received estimate of his career. And there is no doubt that among the members of his own profession, and more particularly on his own circuit, there was a feeling of astonishment and of keen disapproval when it was known that Copley had, in common parlance, taken the King's shilling.

Sir Samuel Romilly wrote in his diary for May 19, 1818, of

> Serjeant Copley, who, after having long expressed sentiments hostile to the Ministry, has lately come into Parliament for a Government borough.[2]

[1] E.g. Arnould, *Life of Denman*, i. 63.

[2] *Memoirs of Sir Samuel Romilly*, iii. 346.

A daughter of Lord Denman told her father's biographer how well she remembered him

coming home one day in deep dejection at the acceptance of office in 1819 by his friend Copley under those who were in direct opposition to his well-known principles; he could never feel the same friendship for him in after years.[1]

Campbell wrote in April 1818:

It is expected he will be Solicitor-General in the next vacancy. He and I used to attend seditious meetings together. Perhaps we may sit together on the Treasury Bench. But he was more of a Jacobin than me (*sic*).[2]

And in another letter a year or two later Campbell represents Scarlett as saying to the then Solicitor-General that, had he been on the popular side of the House, he 'would have retained his name of Jacobin Copley.' 'That is a calumny lately invented,' retorted the Solicitor-General.[3]

There is no smoke without fire. We have seen the impression which he left upon his Cambridge contemporaries;[4] and though his American experiences gave him a distaste for republican institutions, he seems to have reserved this confession for the domestic circle. He certainly took Denman, many years after his return to England, to a banquet of the 'Friends of the People,' and surprised him by the warmth of his language about the Tories,[5] and, while the imagination reels at the notion of 'Jack Campbell' attending a seditious meeting, it is quite possible that they may have encountered one another on some more festive occasion.[6] Copley always displayed a somewhat suspicious eagerness to meet these accusations when made in his presence, and the annoyance which they caused him was apparent; *Tant de soins à*

[1] *Life of Denman*, i. 63.
[2] *Life of Lord Campbell*, i. 350.
[3] *Ibid.* 396.
[4] *Vide supra*, 4.
[5] Le Marchant, *Life of Lord Spencer*, 350.
[6] Campbell was a reporter on the staff of the *Morning Chronicle*, and may have attended dinners of the Friends of Freedom in that capacity; see his Life, i. 56.

se justifier produisent quelquefois un préjugé contraire. And the inference is irresistible that in the freedom of the Circuit Mess and in daily intercourse with his Bar acquaintance, he had been in the habit of airing some sort of ultra-Liberal opinions, and of expressing sympathy with men and causes that were as abhorrent to the orthodox Whig as to the straitest sect of the Tories. To a man of Copley's temperament there must have been many temptations to shock a literal-minded Scot, or to 'go one better' than the enthusiastic Denman. He may even have tossed his hat in the air on learning of Napoleon's escape from Elba, and have exclaimed that Europe was free.[1] But admiration for the great Corsican is hardly consistent with a passion for democracy. By common consent in English political warfare a man is judged by his public utterances, and it is considered to be unsportsmanlike to go behind them; it would be hard to find an instance, save in the case of Copley, where this rule has been violated.

No one, wrote Hayward in the Quarterly Review, who knew him after his entrance into public life could discern a sign, a feature of the democrat. The Ethiopian must have changed his skin and the leopard his spots. The mind of the alleged convert seemed to have been formed in a Tory mould; all his habits of thought were Tory, and if ever a man became a Tory from conviction it was this man who is accused of having pretended to become one with a view to personal advancement.[2]

And to Miss Martineau he appeared

too thoroughly aristocratic by temperament to be capable of any generous conception of human liberty, even though he came from America.[3] One would think that his clay

[1] This is mentioned by Lord Albemarle (*Life*, ii. 140); whether he had the tradition independently or merely took it from Campbell (*Life of Lyndhurst*, 14) does not appear.

[2] *Quarterly Review*, cxxvi. 15.

[3] At the mature age of two; Miss Martineau's statement that Copley 'denounced the Liverpool, Castlereagh, and Sidmouth ministries so vigorously that he was worth propitiating' is a mere figment of the

had been kneaded from the dust of the old high-born governors of the plantations, and his mind fed on the obsequious addresses of the colonists to a long series of kings and queens.

In the eyes, indeed, of Miss Martineau, and in those of Mr. Bagehot, Lord Lyndhurst's misdemeanours were of another order altogether.

We do not mean to charge him, wrote the latter in the 'Economist,' with acting contrary to his principles—that charge was made years ago, but was the exaggerated charge of political opponents, who saw that there was something to blame, but who, in their eagerness and haste, overdid their accusation. The true charge is that he had no principles; that he did not care to have opinions. If he had applied his splendid judicial faculties to the arguments for Free Trade or for Catholic emancipation he would soon enough have discovered the truth. But he never did apply them.

It is a passage most characteristic of the mid-Victorian era and of the Liberalism then in vogue. There was something superbly logical in the arrogance of its intellectual leaders. It was only natural, so they held, that the squire and the parson should slumber on with perfect honesty in their outworn creeds. The great territorial magnates might be credited with sincerity in their claim to do what they would with their own. But that a man like Lord Lyndhurst, a man who had, 'when he chose to exert it, an intellect of the highest cultivation, more fitted than almost any other in his time for the perception of the truth,' [1] should range himself against the angels was explicable only on the hypothesis of entire want of principle. The Tories were the 'stupid party,' and if by any chance they threw up some leader of extraordinary gifts, he must be an 'apostate' like Lyndhurst or an 'adventurer' like Disraeli.

The real gravamen of the charges against Copley lies

brain, but is typical of the sort of railing accusation with which he had often to contend. Miss Martineau, *Biographical Sketches*, 101.

[1] Bagehot, 326.

in the allegation of treating politics as a mere game in which he played exclusively for his own hand. Charles Greville, by no means an unfriendly observer, has recorded a conversation with him shortly after he had first accepted the seals :

> In talking of the speculation he had made, political opinions and political consistency seemed never to occur to him, and he considered the whole matter in a light so business-like and professional as to be quite amusing.[1]

To this reproach lawyer politicians must be exposed so long as the great prizes of the profession are reached by the avenue of Parliament. Copley entered the House of Commons with the frank intention of pushing his prospects at the Bar ; and his freedom of speech and his hatred of humbug often made him assign the least favourable construction to his own conduct. We may add that he possessed a sense of humour in which some of his critics are palpably deficient. Nor had he to wait long for an opportunity of asserting himself. In May 1818 the Government demanded a renewal of the Alien Bill for a further term of two years, and on the 19th, upon the motion for going into Committee, Sir Samuel Romilly spoke strongly against it. He was answered by Serjeant Copley, who urged that, if the Bill were rejected, the country would become the refuge of 'a set of persons from the Continent who did not possess either morality or principle, and who could not be expected to respect those qualities in this country.' There was an ironical cry of 'hear' from the Opposition, but the speaker went on his way unmoved. 'I am expressing,' he continued, 'the opinion I feel on the question, and am aware that these opinions are not acceptable to some honourable members on the other side of the House.' This time a storm of ironical cheering broke out, records Hansard, 'from all sides.' Copley was only to be led into a brief and almost contemptuous defiance.

[1] *Greville Diaries*, i. 135.

I will repeat that I express myself as I feel, and in doing so I shall not be disturbed by any clamour which may be raised on the other side of the House, as there is not one who knows me but is aware that the observations which I have made are the result of my conviction as to the line of conduct which ought to be pursued on the present occasion.

There was no more interruption, and he was allowed to develop his argument on the danger to the public peace from an influx of disaffected foreigners, 'men who had a natural aversion to England, and from their earliest years were impressed with a wish to overpower this country.' It is an argument which is more appreciated by the present generation than by those who lived in the spacious days of Miss Martineau and Mr. Bagehot. There are not a few of us who would applaud Copley's avowal

that he was not so hazardous a politician as to throw an additional quantity of combustible matter into the country in order to see how much we can bear without exploding.[1]

As a tribute to the force of his argument and his display of historical knowledge Sir James Mackintosh who, next to Romilly, carried the heaviest metal on the Opposition benches, was put up to reply to him. In the division the 'friends of the foreigner' mustered only 32 votes to 90.

Parliament was dissolved at the end of the session of 1818, and Copley was returned without a contest for Ashburton, another Treasury borough. Early in the new year he was promoted to the rank of King's Serjeant, and made Chief Justice of Chester in succession to Best, the new Chief of the Common Pleas. Cheshire, like the twelve

[1] Sir Theodore Martin has exposed the garbled and interpolated version of this speech which Lord Campbell allowed himself to place in Copley's mouth; compare his *Life of Lord Lyndhurst* (150–2) with Campbell's (22), and Hansard (2nd ser. xxxviii. 820). Mrs. Hardcastle (*Times*, Dec. 19, 28, 1883), in defence of her father's memory, has suggested that he had access to a report of the debate more veracious than the accepted authority. The suggestion is creditable to filial piety, though deficient in probability. The fact remains that Lord Campbell at any rate professes to quote Hansard, and gives reference to volume and page.

Welsh counties, then stood outside the English Circuit system, and the appointment did not entail the abandonment of his practice. He won golden opinions for the thoroughness and ability which he brought to the discharge of his official duties, but his tenure of the office was not of long duration. In July 1819, Sir Robert Gifford was made Attorney-General, and Copley took his place as Solicitor-General, receiving at the same time the honour of knighthood.[1]

On March 13, 1819, he had been married to the niece of his friend, Sir Samuel Shepherd, now Chief Baron of Scotland. Lady Copley, one of the most brilliant women of her day, and described by Lady Charlotte Bury as resembling a picture by Leonardo da Vinci, was by birth Sarah Garay Brunsden, and had been for some years a widow. Her husband, Colonel Thomas of the 1st Guards, had fallen at Waterloo within a few weeks of their marriage. The Solicitor-General and his bride now occupied the old home in George Street, and a residence a few miles out of London was bought for his mother and sister, but the two households continued to spend much of their time together.[2] As a young man he had been keenly devoted to society in all its forms, especially to dancing, in which, like many eminent lawyers from Sir Christopher Hatton downwards, he excelled, and his handsome person and vivacious talk had ensured him a welcome wherever he went. All this had been put aside during years of studious apprenticeship, followed by absorbing professional success. But no man appreciated more thoroughly the enjoyments

[1] Charles Warren, who succeeded to the post thus vacated, had been hitherto regarded as a supporter of the Opposition, and Jekyll wrote on July 17: 'As Leach, Serjeant Copley, and Warren have been successively appointed to the Chief Justiceship of Chester, they have christened Chester the Rat Trap, and Cheshire Cheese enhances the value of the joke' (*Letters of Joseph Jekyll*, 83). Compare Macaulay's 'Radical Warsong' written in 1820:

> Copley to hang offends no text,
> A rat is not a man, Sir.

[2] Martin, 156.

that wealth can bring, and when his position was once assured he exercised a hospitality which, if anything, was in excess of what the world expected of him. Even in the early days of trial and straitened means, when the burthen of his father's debts was so bravely assumed by the struggling advocate, nothing could daunt his buoyancy of spirit at home or abroad. There was no more delightful companion, and it may be freely conceded that he extracted from life every ounce of pleasure.

His promotion had been generally expected. Campbell himself is constrained to write that his

> spirited and noble bearing had secured him a favourable hearing in the House of Commons, and his very agreeable manners had made him popular with all branches of the profession of the law. Nor did he seem to suffer from any unpleasant consciousness of having acted questionably, or from any suspicion that he might be ill thought of by others. His gait was always erect, his eye sparkling, and his smile proclaiming his readiness for a jest.[1]

He had shown that readiness, that largeness of mental view, and that cheerful courage without a trace of forensic bluster which are the most valuable assets of the lawyer in Parliament. Never at a loss for an answer, he knew how to clothe his argument in language exquisitely chosen. In Banc, or at Nisi Prius, he could illumine the technicalities of the pleader with a terse but vivid eloquence. When addressing Mr. Speaker he chastened his diction with the severe self-repression of a man who is striving above all to convince. While displaying aptitude for the conduct of intricate affairs he was more remarkable for tact and urbanity than for profound legal learning or for oratorical fireworks. So acute a critic as Brougham was especially impressed by the use which he made of the opening speech. 'His statement of a case was so perfect that it rendered argument almost unnecessary. And he possessed the

[1] *Life of Lyndhurst*, 24.

gift of unfolding a subject in such a manner as to carry conviction by mere strength of exposition.'[1] But the most searching criticism of Copley's attributes as an advocate with which I am acquainted is from the pen of an anonymous writer:[2]

No man was more expert in detecting the sophistry of an opponent, or in coquetting with the caution of a cunning or unwilling witness. Never losing sight of the limits within which his privilege of examination was confined, he conducted it with infinite skill, and while the disguises in which, on such occasions, Mr. Scarlett enveloped his designs were sometimes transparent, few men could with confidence fathom the sagacity of Mr. Copley, or safely adopt a line of prosecution or defence upon any presumption of the real object which he had in view. Notwithstanding his apparent simplicity and candour, his artifices were all deep and dangerous. . . . His style of addressing the court or a jury was free from affectation of unwonted energy, from all mock excitement either of mind or body. His action seldom exceeded the decent manipulation of his brief, or a volume of the 'Reports.' Every speech delivered by him was, in its structure, clear, logical, and interspersed with references to cases skilfully selected for purposes of illustration. He trusted for success to the strength of human reason; to the effect which might be produced on intellect addressed by intellect. Accordingly his remarks fell naturally into concise and pointed language. Empty declamation seemed alien to his mind, and the smooth current of his diction was only now and then ruffled by the quick succession of his ideas hurrying him into a corresponding rapidity of utterance. But even during these occasional ebullitions of warmth on behalf of a client, his wondrous power of lucid perception and simple statement was not for a moment obscured, nor did his voice ever lose its pleasing melody.

The Ministry were in need of all the assistance they could obtain during the winter of 1819. There had been much distress throughout the country, the price of corn was high, wages were falling, and the number of

[1] *Life and Times of Lord Brougham*, iii. 437.
[2] *Law Magazine and Review*, liv. 326.

bankruptcies showed a formidable increase. The parliamentary reformers judged the moment opportune for reviving their crusade, and enormous open-air gatherings were held in London and the provinces at which universal suffrage and annual parliaments were clamorously demanded. The press pushed license beyond the borders of sedition, and the reformers were ostentatiously initiating their followers into the mysteries of drill, with the object, as they declared, of making the meetings more orderly and regular. On August 16 took place the 'Peterloo Massacre' at Manchester, wherein a constable, a trooper in the Yeomanry, and four Radicals were killed and about forty spectators were badly injured.[1] An autumn session was summoned, and Lord Sidmouth, the Home Secretary, introduced his famous 'Six Acts,' which forbade the training of persons in military manœuvres, strengthened the law of misdemeanour, authorised justices of the peace in disturbed counties to seize and detain arms, extended the stamp duty to pamphlets, imposed stringent limits upon the right of public meeting, and increased the penalties for blasphemous and seditious libels.

As a law officer Copley shared full responsibility for the Bills, but his active part in supporting them was small. He is reported in Hansard as having spoken only six times during the course of the session, and the main burden rested upon the shoulders of Gifford, the Attorney-General, and upon Lord Castlereagh. The only occasion on which he was called upon to play a leading part was the introduction of the Seditious Meetings Prevention Bill (December 2, 1819), when the sudden indisposition of the Attorney-General threw upon his subordinate the task of unfolding the details of that measure.[2] Three weeks later, however, he was brought to his feet by a personal attack. In the course of his speech Copley had argued that the three acquittals of Hone in the teeth of judicial directions, followed as they were

[1] *State Trials*, N.S. i. 171. [2] Hansard, 2nd ser. xli. 596.

by a public subscription in which eminent members of the Whig aristocracy had joined, 'had had the effect of holding out a hope of impunity to blasphemous libellers.'[1] During the adjourned debate the Opposition speakers charged him with having attributed all the sedition and blasphemy which had since flowed in upon the country to the countenance thus afforded to Hone. Mr. Bennet, the member for Shrewsbury, a prominent figure among the Mountain, and the sworn friend of Creevey, bade him 'consider well before he threw out insinuations against men who were distinguished both for the purity and integrity of their private life, and the consistency of their political character.' And the Marquess of Tavistock wound up his speech by appealing

to a right honourable gentleman opposite, whether he had not in his former, perhaps he might call them his less prudent days, indulged in such a mode of expressing his feelings (as was resorted to by Hone), and whether at the time he did so, he was not, nevertheless, capable of entertaining a just abhorrence of blasphemy and sedition.

As the Marquess sat down Copley sprang to his feet, and, after repudiating the construction which it was sought to fasten upon his previous speech, he continued with unusual warmth:

He would ask the noble lord on what grounds did he bring charges against him for his former conduct? He would ask the hon. member for Shrewsbury on what ground did he charge him with inconsistency? He had never before the time of his entrance into that House belonged to any political society, or been in any way connected with politics, and even if he had intended to connect himself with any party, he confessed that during his short parliamentary experience he had seen nothing in the views,[2] the policy, or the conduct of the gentlemen opposite to induce him, as a true friend of the constitution, to join them.

[1] Hansard, 2nd ser. xli. 1437.

[2] Lord John Russell (*Life of Moore*) relates that Mackintosh whispered to him for 'views' read 'prospects': a fair hit, the point

Scarlett, who was in those days an ardent Whig, and who lived to receive many a bitter taunt on his own change of 'views,' could not resist the opportunity for mild sarcasm. He allowed that he had never heard that the Solicitor-General had been a member of any political society or connected with any political body.

All that could be said was, perhaps, that his hon. and learned friend now entertained opinions different from those he had formerly expressed respecting his present associates; but there was nothing wonderful in this; it was natural that we should like people better the more we became acquainted with them. The very apprehension of being thought inconsistent would excuse some warmth—a warmth which seemed to verify the old proverb that proselytes were generally enthusiasts.

On January 29, 1820, died George III., and the opening months of the new reign brought with them ample work for the law officers. On February 22 the Cato Street conspirators were arrested, and on April 17 the trials of Thistlewood and ten of his confederates began. It devolved upon the Solicitor-General to examine Adams, one of the gang who had turned approver, and was the main witness for the Crown on the treasonable as distinguished from the murderous side of the plot. On the third day he summed up for the prosecution in a speech of great weight and power, and in the trial of Ings, Thistlewood's chief lieutenant, he was instructed to open the case, leaving the final word to the Attorney-General. Copley's performance was worthy of his reputation, calm, judicial, unimpassioned, but leaving no point untouched, no loophole unguarded; and it was remarked with admiration how he handled and managed the long chain of evidence without allowing a single link to drop.

Then followed in rapid succession the arrival in England of Queen Caroline and the deplorable events which

of which Lord Campbell has thought necessary to explain at some length.

culminated in the Bill of Pains and Penalties. The story is so indissolubly connected with the fortunes of Brougham that, to avoid repetition, I have left it to a later page.[1] Suffice it here to say that in that battle of giants Copley more than held his own against Brougham and Denman. His handling of one of the Queen's witnesses, a certain Lieutenant Flynn, dealt a blow to her case from which it never fully recovered; and the speech in which he summed up the evidence for the Bill went a long way to destroy the effect produced by the furious cross-examinations of Brougham and his colleagues. On no occasion did he more carefully abstain from anything like display. His dignity, courtesy, and imperturbability in the face of Brougham's onslaughts were as conspicuous as the easy good humour and bantering air with which he occasionally elected to combat the somewhat high-flown rhetoric of his adversaries. It was a hateful task, but he discharged his duty like a gentleman.[2]

At the General Election of 1820 he had been again returned for Ashburton, but for the next four years he figured little in the House of Commons. Calm had succeeded to storm, Queen Caroline was dead, the country was prosperous again, the cry for reform had

[1] *Vide* Chapter xi, *infra*, and Martin, 179 *et seq.*

[2] Against an almost unbroken consensus of opinion to this effect may be set the spiteful words of Creevey (i. 333 and *infra*, 257 *n.*), to whom, for some unknown reason, Copley was especially obnoxious. The following extracts may serve as specimens of Brougham when out of temper: 'Let it be recollected that this came from the Solicitor-General—the only lawyer, at least the only accomplished lawyer of the profession, according to the opinion of some of his friends, who, by the bye, monopolised that opinion as he did the knowledge of the law.' And again, 'He felt infinitely more awe in approaching his (Gifford's) learned coadjutor because he knew his habit always was to tell the opponent who "touched him near," "Go away, sir; you are no lawyer—you can be no lawyer—you are only the Queen's Attorney-General, but I am the King's Solicitor-General; therefore I am a lawyer and a most accomplished lawyer."' The serene good nature and equable temper of Copley could only be amused by such petulant outbreaks.

subsided, and no one seemed the worse for the Six Acts. His ever-increasing business left Copley little time for politics. His practice was of that substantial nature which makes more mark in the fee book than in the columns of the daily press. Almost the only one of his cases which has been rescued from oblivion is that of Maceroni *v.* Murray, in which the publisher of the Quarterly Review was sued by an English officer lately in the service of Murat.[1] The reviewer, in the course of a slashing article against Sir Robert Wilson, one of the *bêtes noires* of the Quarterly, had spoken in no halting terms of Maceroni, who had been engaged in 1815 by the Emperor of Austria to induce King Joachim to desist from his descent on Naples.

> For Murat we cannot feel respect, but we feel very considerable pity. Of Mr. Maceroni we are tempted to predict that he has little reason to apprehend the honourable mode of death which was inflicted on his master. *His* vocation seems to be another kind of exit.[2]

For this delicate innuendo the Colonel sought 10,000*l.* damages at the hands of a British jury. The case was tried before Abbot, L.C.J., and it was attempted to make the issue a purely political one. Mr. Bell, who appeared for the plaintiff, indulged in a general tirade against Toryism, while the defendant had subpœnaed the Duke of Wellington, Lord Liverpool, and other ministers. Copley, who was retained by Murray, saw at a glance that, both for the sake of the verdict and on grounds of public policy, it would be most undesirable to submit these notables to a roving cross-examination. Fortune favoured him ; Maceroni had also written a book, and Bell quoted from it to heighten the effect of his address. This was enough for Copley ; the whole book was thereby

[1] Colonel Maceroni was the patentee of a pike which formed part of the equipment of the physical force men in 1830–31. The late G. J. Holyoake, in a recently published volume, speaks of a specimen of the 'Maceroni pike' lingering on to the days of April 1848.

[2] *Quarterly Review*, xix. 146.

put in evidence, and he called for certain other passages to be read from the ' Memoirs of the Life and Adventures of Colonel Maceroni.' They proved his case, or rather laid sufficient foundation for his speech. He was relieved from the necessity of calling witnesses, the plaintiff was shut out from his reply, and the jury returned a verdict for the defendant. It was a brilliant little victory, though snatched by tactics not unprecedented at Nisi Prius.

In January 1824 Sir Robert Gifford was appointed Chief Justice of the Common Pleas, vice Sir Vicary Gibbs, and Copley succeeded him as Attorney-General, with Sir Charles Wetherell as Solicitor-General. His tenure of that office lasted for more than three years, and was on the whole uneventful.[1] His intervention in Parliamentary debate was limited to purely legal questions. The following quotation from his speech on a Bill to settle the salaries and retiring pensions of the judges is characteristic of the broad views which never deserted him:

He should be anxious not to overload the judges with business so as to make them, as they actually were in too many instances, slaves to the technical part of the profession. He would give them the opportunity of cultivating general literature, he would allow them leisure to return to the pleasant pursuits of early days which, he lamented to say, too many of the Bar were obliged to suspend—a suspension that in his mind was a great drawback on the profession. When an individual was raised to the Bench he should have the opportunity of directing his mind beyond the mere technical duties of his office; he should be able to turn his attention to what was passing in the world.[2]

[1] It may be noted, however, that in this capacity he prosecuted Fauntleroy for forgery on the Bank of England, October 30, 1824. The French papers of the time have recorded how ' Sir Coppley ' discovered that M. Berryer, the famous French advocate, was in London, and formally introduced him to the English Bar in return for a similar compliment once paid by him in Paris to Erskine.

[2] Hansard, 2nd ser. xiii. 636.

His enlightenment, however, was less conspicuous in the opposition which he displayed on more than one occasion during these years to the Bill which proposed to grant the right of making a speech to counsel for prisoners charged with felony, a privilege already enjoyed both in high treason and misdemeanour. To those who remember the sturdy opposition of the bulk of the legal profession to the recent Act by which prisoners are allowed to give evidence there is a familiar ring about the whole of Copley's argument.[1] 'At present the judge was of counsel for the accused in trials for felony.' 'The case would stand as in Nisi Prius practice, where the odds were always in favour of the plaintiff.' Counsel for the prisoner would be at the mercy of a dilemma, 'shall I call witnesses, if I do I must run the risk of the effect of a reply?' 'Did the hon. mover wish to see a trial for felony conducted like a trial for treason? Did he wish to see the same eagerness, energy, and even passion displayed?'[2]

And he drew a picture of the calm majesty and justice of an English criminal trial, which must have sounded strange in the ears of those who knew the squalid reality, the noise, the confusion, the undignified haste which then, and for long after, marked the ordinary procedure at sessions and assizes. Copley exposed himself to the prompt rejoinder of John Williams that he viewed the subject too much in the light of a lawyer and not as it would be likely to afford satisfaction to the people of England.

He had omitted altogether that inequality in the situation of the prisoner and the prosecutor which formed the chief ground of the present motion. Nothing could be more offensive and lamentable than the forlorn and derelict situation to which prisoners were sometimes reduced, and the desperate attempts which they made to save themselves, and which sometimes brought down upon them the fate they were endeavouring to avoid.

[1] Hansard, 2nd ser. xi. 205. [2] Hansard, *id.* xv. 598.

In September 1826 the unexpected death of Lord Gifford, who had become Master of the Rolls only two years earlier, caused a vacancy in that office. Lord Liverpool wrote immediately to the Chancellor to express his intention of offering the Rolls to Copley.[1]

He has no competitor at the Bar, at least on *our* side, nor any on the Bench who can compete with him in the highest honours of the profession.

The arrangement does not appear to have altogether commended itself to Lord Eldon, who would have preferred an Equity lawyer.

A man of Copley's eminence, he wrote to Mr. Peel, in that part of the profession in which he has been engaged may probably feel unwilling to go into a Court of Equity as a judge, never having been in one as counsel, and especially in that Equity Court in which much business is rather business of form than requiring the exercise of a powerful intellect. He has always refused briefs in Scotch causes, which looks as if his views were directed to the King's Bench and not to the office of Chancellor, who must hear so many Scotch causes.[2]

When, however, Copley accepted the proposal, which he did without hesitation on September 14, Lord Eldon wrote again to the same correspondent :

I think he has acted very prudently, especially taking into the account that he goes to school in the lower form to qualify him to remove into the higher if he takes the chancellorship.

The Master of the Rolls was not disqualified, at that date, from sitting in the House of Commons, and though Sir John had to go through the form of re-election, it was a form only. The constituents who thus returned him were no less august a body than the Doctors and Masters of the University of Cambridge, who had chosen him as colleague to Lord Palmerston at the General

[1] Twiss, *Life of Eldon*, ii. 575.
[2] Campbell, *Life of Lyndhurst*, 43 ; Martin, 211.

Election in July. The latter was one of the sitting members together with William John Bankes, the friend of Byron, 'our glorious, our Protestant Bankes,' of Macaulay's ballad; and matters were complicated by the appearance on the scene of Mr. Goulburn, the Chief Secretary for Ireland, to whom, rather than to Bankes, the epithet of Protestant was due. Palmerston was known to be favourable to the Catholic claims, which had been left an open question by Lord Liverpool. Copley was opposed to them, and the active influence of the anti-Catholic members of the Government was exerted in his favour and in that of Goulburn. Palmerston retained the seat, but he was second on the poll.[1] The spectacle of three ministers and one of their supporters engaged in a fierce electoral struggle was neither edifying in itself nor significant of any great harmony in the party. Copley's position as senior member was a testimony to his popularity with men of both sides.

I dined a few days ago with the new Master of the Rolls, wrote Campbell[2] to his brother in November. He is quite unchanged, and speaks on public topics in his wonted manner. He said: 'I hear Shadwell has had some new lights on the Catholic question, and thinks there might be great danger in granting further concessions to the Catholics, and that he is to be the next Solicitor-General.' Of Warren he said to me: 'Poor Warren, he did not know how to carry it off. He defended himself instead of attacking his accusers.' I was inclined to say, *Ille crucem sceleris* &c.[3]

Copley was Master of the Rolls for only eight months.

[1] Dalling's *Life of Palmerston*, i. 154, 165.

[2] *Life of Lord Campbell*, i. 437.

[3] According to Campbell (*Life of Lyndhurst*, 24), 'Poor Charles Warren,' who succeeded Copley as Chief Justice of Chester in 1820, 'could not stand the reproachful looks and ironical cheers of his former friends in the House of Commons, and he soon died of a broken heart.' As a matter of fact, he remained M.P. and Chief Justice until his death in 1829, and the office was abolished in the following year.

For some years prior to his appointment the demands upon the time of that official had become less and less onerous. He had wholly ceased to act as assistant to the Lord Chancellor, and neither sat with him to advise in cases of difficulty nor supplied his place during his occasional absences. His duty, as an Equity judge, was restricted to the hearing of causes and petitions [1] in his own Court, the sittings of which were held in the evening three times a week, and were computed not to occupy more than 413 hours in the course of the year. Campbell [2] quotes 'the gossip of the profession' to the effect that Copley 'sat as seldom as possible, and rose as early as possible,[3] and did as little as possible,' but he is constrained to add that he showed his tact and cleverness by avoiding all scrapes into which he might have fallen, and by keeping the Bar and the solicitors in good humour. And in addition to his other duties the Master of the Rolls presided over the hearing of Indian and Colonial appeals in the Privy Council.

It must have been apparent to Copley that Lord Eldon was at the end of his tether, that he was most unlikely to suffer any change or rearrangement of business, and that rearrangement would be worse than useless without a more or less comprehensive measure of Chancery reform. On such a scheme he had been engaged as Attorney-General, and he continued his labours when elevated to the Bench.

Since the beginning of the century the bitter cry of the suitor in Chancery had been increasing in volume, and Charles Dickens has painted, in colours which can never be effaced, the misery, desolation, and woe for which the administration of Equity was responsible.

[1] Motions were not assigned to the Rolls till the time of Sir Charles Pepys.

[2] *Life of Lyndhurst*, 44.

[3] He was the first Master of the Rolls who did not reside in the now demolished Rolls House in Chancery Lane, and we can well imagine that the evening sittings would have been especially irksome to a non-resident.

The biographer of Lord Langdale has used language more measured but scarcely less emphatic:[1]

> Hundreds of causes were remaining to be heard; thousands of suitors had abandoned proceedings, and many were ruined under grievous oppression, merely because they were unable to afford the money or the time necessary to enable them to proceed. Even those who found the means and expended the money and time necessary to get their causes ready for hearing, were kept in suspense for an unreasonable length of time, uncertain whether they were thereafter to be rich or poor; many, from the tardy steps of justice, were unable to form or settle their plans in life, and were kept in a state of the most harassing wretchedness.

Much of this was undoubtedly due to the 'indecision, the doubts, and the overcautiousness of Lord Eldon.' But the root of the evil lay far deeper, in the multifarious duties which were attached to the office of Chancellor, in the vast increase of business consequent upon the growth of population and wealth,[2] in the enormous development of bankruptcy, which may be said to have come into fashion during the great war, and above all in the total insufficiency of the judicial staff, which was no greater in the time of Eldon than in that of Orlando Bridgeman and Nottingham. The real stumbling-block was to be sought in the ministry which permitted such a state of things to exist, and for them it can only be pleaded that, up to 1815 at all events, they had other things to occupy their attention.

The pioneer in Chancery reform was Michael Angelo Taylor, M.P., who as early as 1811 had moved for the appointment of a committee to enquire into the state of the appeals in the House of Lords and of causes in the Court of Chancery. He enlisted the support of Sir Samuel Romilly, and after many rebuffs his pertinacity was rewarded by the Act for creating a Vice-Chancellor,

[1] Duffus Hardy, *Life of Lord Langdale*, i. 349.

[2] The value of the property administered in Chancery grew from three-quarters of a million sterling in 1726 to forty millions in 1825.

which was passed in March 1813. The measure fell far short of Romilly's wishes, and did little to improve the situation. The choice of Sir Thomas Plumer as the first Vice-Chancellor of England was not a fortunate one,[1] but it was still the system rather than the men that was at fault.

The general discontent grew louder. Michael Angelo Taylor had been reinforced by a more vigorous advocate in the shape of 'Johnny' Williams, and the superabundant energies of Brougham were from time to time employed in the same endeavour, though the personal and often unfounded attacks which were directed against Lord Eldon did much to prejudice and injure their cause. Finally, in June 1821, the Government yielded, and a commission was appointed to enquire into the whole subject, and one of their first steps was to call before them practitioners belonging to both branches of the profession—barristers and solicitors of the Court—a measure which had hitherto been rejected as a personal affront to the Chancellor. The report, dated February 28, 1826, and embodied in 188 propositions, laid bare to the world the state of affairs in the Court of Chancery and its subordinate offices, and the public disclosure left the Government no alternative but to 'do something.' They accordingly turned without a week's delay to Copley, who was then Attorney-General, and instructed him to prepare a Bill for the reform of the Courts of Chancery in accordance with the recommendations of the Commissioners. He had no previous acquaintance with Equity practice, and, according to Lord Eldon, had never held a brief in Chancery, but he applied his powers of acquiring and assimilating knowledge to such purpose that by May 18 he was ready with a Bill to 'regulate the Practice of the Court of Chancery,' the details of which he laid before the House in a speech which won applause from all quarters, and can still be studied with profit as a masterpiece of exposition.

[1] See *Life of Lord Langdale*, i. 350, and *Romilly*, iii. 102, 186.

Only a few months earlier he had committed himself to the statement that the principles upon which the Court of Chancery was established were so sound and so admirable that he would defy the ingenuity or the collective wisdom of any body of men to devise a system more beneficial to the community.[1] Limiting it strictly to the principle of equitable jurisdiction as distinguished from the mass of abuses which had gathered round its working and administration, he still adhered to this declaration. Indeed, his speech on the present occasion was stigmatised by Mr. Williams as a 'florid and gorgeous panegyric' on 'the immaculate unerring Court of Chancery.'[2] As the Bill never passed beyond the preliminary stage, it is unnecessary to glance at its details. The primary cause of its withdrawal was the necessity for compensating disturbed and vested interests, a demand which the Chancellor of the Exchequer was not prepared to meet. And there was, moreover, another weakness in the Bill on which the reformers were not slow to pounce. As was only meet and fitting, Sir John Copley had paid an eloquent tribute to the 'artlessness and simplicity of Lord Eldon's manners, his anxiety to do justice, the depth and extent of his judgment, and his vast and capacious memory.'[3] But he could not disguise the fact that, though it was deemed preferable to proceed by way of statute, the major part of the suggested reforms could be now, and might at any time during the last five and twenty years have been, carried out by Lord Eldon's own fiat as a simple order of Court.

The same Bill, amended and rendered more practicable, was reintroduced early in the next Session, its author in the meanwhile having become Master of the Rolls. Closer acquaintance with the Courts of Equity had given him a clearer insight into the sources of the malady, and

[1] Hansard, xiv. 1184. The sentiment has a marked resemblance to the Duke of Wellington's famous panegyric on the British constitution, vide *infra*, 77.

[2] Hansard, 2nd ser. xv. 1205, 1230. [3] Hansard, *id.* 1228.

he now had come to appreciate the fact that the great secret of delay in the practice of Chancery resolved itself into the course of proceedings before the Master. Though the reformers were once more loud in compliment to Copley's eloquence, Michael Angelo Taylor declared that those who were at all acquainted with the business of the Court of Chancery knew right well that this Bill was made use of as a tub to catch a whale.

Ministerial changes, however, were impending which doomed it to the same fate as its predecessor; and it was in another place and in another capacity that Copley was to resume the task. He was about to be removed from the chamber in which he had first won name and fame, and it is to be regretted that his last appearance in the House of Commons was marred by a scene which gave undisguised satisfaction to his ill-wishers.

On March 5, 1827, within a few days of the debate on Chancery Reform, Sir Francis Burdett moved

that this House is deeply impressed with the expediency of taking into immediate consideration the laws imposing civil disabilities on his Majesty's Roman Catholic subjects.

For years past, and notably since the return of Mr. Canning to the Cabinet and the enrolment of the Grenville party in the Ministerial ranks, the prospects of the Catholic claims had been steadily growing brighter. They were, as we have seen, an open question among members of the Administration, and, though Lord Eldon, the Duke of Wellington, and Mr. Secretary Peel were opposed to all concession, the 'emancipators' enjoyed the brilliant advocacy of Canning, and the support, tacit or avowed, of a goodly number of his colleagues, while the General Election of 1826 was believed to have brought in a pro-Catholic majority. On this particular occasion the bonds of party discipline were more than ever relaxed, for Lord Liverpool had been struck down by paralysis on February 17, and the hopelessness of his recovery was generally admitted. There was much uncertainty

as to his successor, but there was a general feeling in the air that the old *régime*, with which the names of Eldon and Sidmouth were indissolubly connected, was passing away.

Copley, who had been returned to Parliament mainly by the anti-Catholic vote, was in duty bound to oppose Burdett's motion. Otherwise prudence would have suggested that he should abstain from a debate which was almost certain to bring him into collision with Canning, with whom the choice of a successor to Lord Eldon would not improbably rest.

It was early in the evening of the second day of the adjourned debate, wrote Hayward,[1] who was a personal witness of the scene, that the Master of the Rolls rose from below the gangway, wigged and robed. The principal point he pressed against Canning was that he had not sufficiently guarded the proposed measure by what were called 'securities;' both the point and the argument in support of it being obviously borrowed from a pamphlet recently published by Dr. Phillpotts,

then Prebendary of Durham, but better known as the eloquent, learned, and most pugnacious 'Henry of Exeter.'

This 'conveyance' was detected by the audience before Copley had concluded, and some one, said to have been Canning himself, whispered softly the lines from a popular song,

> Dear Tom, this brown jug which now foams with mild ale,
> Out of which I now drink to sweet Nan of the vale,
> Was once Toby Phillpotts'.

The apt quotation passed from mouth to mouth; it was highly disconcerting to the speaker, and was, I suspect, the cause of that 'strong and unfortunate excitement'[2] which produced something like a breakdown in the middle of his argument, and which he attributed to emotion caused by a sneer of Scarlett's at his Cambridge

[1] *Quarterly Review*, cxxvi. 23. [2] Hansard, 2nd ser. xvi. 920.

constituents. Excitement and emotion were so foreign to Copley's calm, unruffled demeanour, that it must have been no ordinary provocation that reduced him to a standstill.

He was answered in a splendid debating speech by Plunket, who was followed by Peel and Brougham, and then Canning rose to wind up the debate. He was irritated with Copley beyond all bounds. He had been 'mightily nettled'[1] by the pamphlet itself, in the composition of which he quite unwarrantably believed that both the Chancellor and the Master of the Rolls had had a hand.[2] And the wholesale adoption of Phillpotts' trenchant argument had imparted an unusual acerbity to Copley's periods of which the speaker himself was apparently unconscious. Canning attacked him in language which has been ridiculously exaggerated,[3] but which exceeded the bounds of fairness and courtesy. His overwrought condition is sufficiently indicated by that appeal to injured personal honour which is generally the danger-signal of a statesman in a passion.

Copley had made a great point of the securities on the part of the Roman Catholics which alone would reconcile him to the motion. How were these to be obtained, asked Canning; surely in the last resort by communicating with the Pope? And then he produced an official opinion signed by Robert Gifford and John Singleton Copley, to the effect that he would incur the penalties of a præmunire if he acknowledged or answered a letter which had been sent to him when at the Foreign Office by the Pope's secretary to announce the accession of his Holiness Pius VII. Copley, who had more than once interrupted, with less than his wonted judgment, protested warmly, and not altogether without warrant, against the use in the House of Commons of a 'privileged' document, and the debate threatened to degenerate into a personal altercation.

[1] Greville, i. 91. [2] *Diaries of Lord Colchester*, iii. 466.
[3] E.g. by Denman, *Life*, i. 205.

Though Denman and his friends could not conceal their delight, there was a feeling that Canning had done himself neither credit nor benefit. The motion was rejected by a majority of four, to his extreme surprise and annoyance, and Greville records the general opinion among his friends 'that, if Canning had not lashed the Master of the Rolls so severely, he would have got more votes.' The breach was only temporary; on their next meeting Canning made apology, and when, just a month later, he wrote to Copley what was tantamount to an offer of the Great Seal, he subscribed himself '(*Philipotto non obstante*) very sincerely yours.' 'Believe me, now as always, minus twenty-four hours,' was the reply.

CHAPTER III

LORD LYNDHURST'S FIRST CHANCELLORSHIP— CATHOLIC EMANCIPATION

1827–1830

On April 10, 1827, Canning, a broken man, and with the shadow of death almost visible upon him, received the King's commands to form an administration, and on the 13th he offered the Great Seal to Copley, Lord Eldon having somewhat unexpectedly declined it on the previous day.[1] From motives mainly personal, in which an ingrained distrust of Canning himself had no small share, the Duke of Wellington and Sir Robert Peel, together with the old Tory Guard, refused to co-operate in any way with the new Prime Minister, and in his extremity he turned to the moderate Whigs. Lord Lansdowne became Home Secretary, Lord Carlisle held the Privy Seal, Tierney was Master of the Mint, and Palmerston was promoted to Cabinet rank. But the reconstituted Government was essentially a coalition; half a dozen members of the Liverpool Cabinet transferred their allegiance to Canning, including Lord Harrowby, Mr. Huskisson, and 'Prosperity' Robinson, now created Lord Goderich, and the question of the Catholic claims was again left open.

On the resignation of Lord Eldon, Copley was obviously marked out as his successor. Among the Tory lawyers he stood without a rival, among the Whigs the only possible claimant was Scarlett; but the latter was favourable to Emancipation, a fatal disqualification for the keeper of the conscience of George IV., who stipulated

[1] Twiss, ii. 595.

that his Chancellor at any rate should be an anti-Catholic, and expressed a strong wish that Copley should be appointed.[1]

The proposal was not accepted without hesitation by the Master of the Rolls. His present salary was 7,000*l.* a year for life, he was able to retain his seat in the House of Commons, and he represented one of the most enviable of all constituencies. Canning's health rendered the stability of the administration highly precarious. He himself was *persona ingratissima* to the Whigs, and he could not tell how the seceding Tories would regard his acceptance of office.[2] It was quite possible that at the end of a twelvemonth or less he might find himself an ex-Lord Chancellor with a peerage and nothing but a pension of 4,000*l.* a year to support it on.

But the hesitation was not for long, and on April 16 it was known in London that he had taken office under the title of Baron Lyndhurst of Lyndhurst in the County of Southampton.[3] Lord Eldon, whether his oft-reiterated desire for retirement was genuine or not, showed no trace

[1] *Life of Campbell*, i. 442 ; Martin, 217.

[2] That it was resented in some quarters is clear from the following anecdote preserved by Lord Kingsdown : (*Reminiscences*, 49). 'Lord Lyndhurst was engaged to dine the following week at a large political party of his old colleagues—I forget at what house—and having abandoned them, to their great annoyance, he had some doubt whether he should keep his engagement. After consulting with his wife, however, they determined that it would be cowardly to stay away, and that they would face it out. Lord Lyndhurst says that he took down to dinner Mrs. Arbuthnot, who did nothing but reproach and abuse him the whole time that he sat by her ; but Lady Lyndhurst was taken down by Lord Eldon, who was most marked in his attentions and courtesy to her, and in enabling her to overcome the awkwardness of the position in which she could not but feel that she was placed.'

Mrs. Arbuthnot may be taken to represent the view current at Apsley House. But it should be pointed out that the 'abandonment' of 'old colleagues' is not strictly accurate, for Copley had ceased to be a member of Lord Liverpool's Government eight months before he became Chancellor.

[3] Canning's lines in the *Anti-Jacobin* about 'the Derby Dilly carrying six insides' are said to have deterred him from choosing the title of Ashbourne, a consideration either forgotten or ignored by the late Lord Chancellor of Ireland.

of rancour towards his successor. A kindly correspondence was exchanged between them, and on April 27 he called to offer his personal congratulations. In the course of the interview Lord Eldon mentioned that he had a son who held a place under the Great Seal, 'at pleasure'; whereon Copley exclaimed, 'I shall be glad to take him by the hand, and hope he will continue in the office as long as *he* pleases.'[1]

On May 2 Lord Lyndhurst was introduced into the House of Lords by Lord King and Lord Howard de Walden, and took his seat with the same ceremonial that had been observed in the case of Lord Erskine twenty-one years earlier.

Copley's fine presence and bearing, to quote Sir Theodore Martin, never showed to more advantage than when he appeared in the Chancellor's robes. Tall, erect, self-possessed, with a voice deep and rich in cadence, a command of words that came with ease and were yet exquisitely apt, a manner firm, courteous, and dignified without effort, no worthier representative could well be imagined of the great office.[2]

The forehead high and ample, says another writer, the eyebrows shaggy and prominent, beneath which in his earlier days flashed two keen and sparkling orbs, the mouth indicative of firmness and quiet decision of character, and the scowl which occasionally stole over the sunshine of his placid countenance, all attracted the gaze of the spectator.[3]

His enemies, indeed, professed to find a marked resemblance in his face to the traditional features of Mephistopheles—a resemblance which is not apparent in any of his portraits—and 'Mephistophelean' was a favourite epithet of disparagement. To those who only know Lord Lyndhurst in the pages of Sir Theodore Martin, the term is singularly inapplicable, but a writer in the Edinburgh Review, whom it is not difficult to identify with the late Mr. Henry Reeve, declares that the sobriquet was strangely suited at once to the fine but somewhat mocking

[1] Lord Colchester, iii. 489.
[2] Martin, 222.
[3] *Law Magazine and Review*, liv. 360.

cast of his countenance, and to some leading points in his disposition—'a sneering propensity combined with a singularly genial character.'[1] And Lord Albemarle speaks of a 'disagreeable expression, a sort of a scowl, which, however, wore away as he advanced in years.'

There is a saying of Lord Lyndhurst's, quoted by Lady Cranworth to Crabb Robinson,[2] that a Chancellor's work may be divided into three classes: first, the business that is worth the labour done; second, that which does itself; third, the work which is not done at all. And it was now for the first time in a laborious life that he was at leisure unrestrainedly to enjoy 'the hardly earned privilege of mingling with distinguished persons of all classes, with the leaders in literature, science and politics as well as with the most accomplished and agreeable members of the gay world.'[3]

His wife was the widow of a colonel in the Guards. Her beauty and her wit rendered her one of the most fascinating women of the time. She had made the house in George Street the centre of a brilliant hospitality, and in her drawing-room and round her husband's board might be found representatives of all that was gayest and most interesting in the London of that day, a company which was in conspicuous contrast with the somewhat narrow professional circles in which the successful lawyer was for the most part content to move. That the Chancellor's upward flight provoked envious criticism goes without saying, though even Lord Campbell admits that 'by his *bonhomie*, or rather his *abandon*, he contrived to keep up his popularity with all ranks.'[4]

Unless the successful aspirant is fitted for his new position, wrote Hayward, he seldom retains it long. Copley was eminently fitted for the position he took up, so fitted that

[1] *Edinburgh Review*, cxxix. 564.
[2] *Diary*, iii. 454.
[3] *Quarterly Review*, cxxvi. 22.
[4] Cf. Lord Kingsdown, 51, 'the reckless gaiety and familiar cordiality which made Erskine and Brougham and Copley the idols of their juniors.'

he seemed born to it; and a discriminating observer would have said of him what Talleyrand said of Thiers, 'Il n'est pas parvenu; il est arrivé.'[1]

Hayward knew Lord Lyndhurst well, and a few lines before the passage I have just quoted he asserts that 'he never threw off an old friend, he was never ashamed of a vulgar or unfashionable acquaintance.' Whether his wife was sufficiently discerning to follow the example may be doubted. 'She probably made her society as good as she could at starting and improved it as she went on,' says Hayward. 'She now weeded her visiting-book almost entirely of lawyers and their wives and daughters,' writes Campbell;[2] and to this grievance may be traced a good deal of the animus which inspires his 'Life of Lord Lyndhurst.'

Generous to the verge of prodigality, the new Chancellor had nothing in common with the illustrious men who have continued habits acquired in poverty and obscurity long after wealth and fame have been reached. And he was one of those who considered that a large official salary entailed corresponding obligations. *Quot homines tot sententiæ!* Lord Eldon's tenure of the Seals had been marked by a domestic frugality which made the contrast with Lyndhurst's jovial reign all the more conspicuous.[3] And the contrast was equally striking in other ways. 'What would people have said of me,' Lord Eldon asked his favourite son, William Henry Scott, 'if I had been seen driving about in a cabriolet?'[4] 'I will tell you what they would have said, dear father,' was the answer, 'there goes the greatest lawyer and the worst whip in all England.' A few years later, when Chief Baron Lyndhurst contravened

[1] *Quarterly Review*, cxxvi. 23. [2] *Life of Lyndhurst*, 41.

[3] Twiss, *Life of Eldon*, iii. 479.

[4] One of the last of the *grandes dames* of London society expressed equal horror on hearing that the late Marquess of Salisbury was in the habit of 'going about in a cab,' meaning thereby that he used a brougham instead of the stately chariot appropriate to the marquisate.

all judicial etiquette by retaining, out of Court, his own hair, and his ordinary hat and apparel, instead of the dress-coat and waistcoat, knee-breeches, silk stockings, and gold-buckled shoes, 'Look at that fellow,' exclaimed James Alan Park, 'without a wig and such a hat! he don't deserve to be a judge.'[1] An Irish barrister, who once saw him at Beaumaris, after the labours of the assizes were over, informed Sir Theodore Martin that

> he looked more like a cavalry officer than a solemn judge; for he was dressed, according to the fashion of the day, in white Russia duck trousers strapped under his boots of polished leather, and in a becoming frock coat. His gaiety of air, his handsome well-cut features, his straight figure, had all a soldierly cast.[2]

Yet there was another side to this life of magnificence and display. Lady Lyndhurst, with all her charms and attractions, was an extravagant woman, and their joint expenditure was quite equal to the Lord Chancellor's salary of 14,000*l.* a year.[3] Copley's golden days at the Bar had been too long in coming to enable him to put by; he had paid his father's debts, and he made himself responsible for the comfort and happiness of his mother and sister. We may dismiss the silly stories about bailiffs at the dinner table disguised as waiters, a well-worn pleasantry which has descended from Sheridan down to public men of the present generation. But Lord Lyndhurst undoubtedly lived well up to his income, and the emoluments of office became of more and more importance to him. When once this can be said of a public man it requires a record of more than ordinary disinterestedness to save him from the imputation of

[1] *Random Recollections of the Midland Circuit*, 36.

[2] Martin, 279; and for a less complimentary description in the same vein, see *Adventures of an Attorney in Search of a Practice*, 59.

[3] It is now fixed at 10,000*l.* Prior to 1813 it was 19,000*l.*, but Lord Eldon sacrificed the odd 5,000*l.* for the salary of the Vice-Chancellor of England.

mercenary motives. 'His example,' wrote Greville, 'is a lesson to statesmen to be frugal.' [1]

Canning's tenure of office was short and troubled; he became Prime Minister on April 10, 1827, and on August 8 he breathed his last in the Duke of Devonshire's villa at Chiswick, in the very room where Charles James Fox had passed away. Estranged friends and inveterate foes, and the invective of Earl Grey, 'so insolent, hard, and cold, so insulting, and so cruel,' [2] had been too much for a sensitive temperament and a constitution already enfeebled by illness. During that short session in which he stood like a lion at bay, the Premier and his Chancellor were in close and intimate association.[3] It was at Lyndhurst's summer residence at Wimbledon that he contracted the fatal chill—sitting down in the garden when hot and exhausted from walking.

After Canning the deluge. The Government, outvoted in the Lords,[4] was still numerically strong in the Commons; but it must have soon been apparent that there was no one capable of holding the Coalition Ministry together. The experiment, however, was made, and Lord Goderich accepted the King's invitation to form a Cabinet. The changes in the administration were few, and did not affect the law officers. But Goderich—*capax imperii nisi imperasset*—was from the first unequal to the task, and made a pitiable display of vacillation amid a cloud of brawls and conflicting claims. Parliament was not sitting, but the Cabinet was torn with dissensions, and the battle of Navarino threatened to add foreign complications. Matters at last reached a point at which the Chancellor, who had already assumed a commanding influence at the Council Board, took a decisive step. He informed Lord Goderich that the King must be told without delay of the unfavourable

[1] ii. 107. [2] Miss Martineau, *History of England*, i. 441, 442.

[3] See particularly the *Croker Papers*, iii. 367.

[4] On the Duke of Wellington's amendment to the Corn Law Bill, June 1, 1827,

state of opinion with regard to the Government and of the scanty prospect that it would be able to meet Parliament with any chance of carrying on public business. And he did not hesitate to say that, if Lord Goderich declined to do so, he himself would make a representation to the King.[1] The Premier, who had more than once threatened resignation, now put his threat in execution, and on January 8, 1828, the 'transient and embarrassed phantom' disappeared into private life, to emerge three years later as Secretary for the Colonies under Lord Grey. The same day George IV. sent for the Chancellor, and on the 9th the Duke of Wellington and Lord Lyndhurst left town for Windsor, in obedience to the King's commands, to receive his Majesty's orders respecting the formation of a new Government.[2]

It may be assumed that it was at the suggestion of Lord Lyndhurst that the Duke of Wellington was sent for. That the King was determined to retain 'his Chancellor' appears from a letter of the Duke's to Peel. 'Excepting Lyndhurst, who it is understood must be in office, everything else is open to all mankind, excepting one person—Lord Grey.'[3] Lord Eldon was out of the question, and the escape from a relapse into Eldonism may have accounted for some of the general pleasure with which Copley's retention of the Seals was greeted.[4] He was indispensable now as he had been when Canning formed his Cabinet nine months earlier. He had already given a taste of his quality in the House of Lords, where, reversing the usual process, he had acquired from the first, and almost instinctively, an influence and an authority which he never possessed in the popular assembly.[5] And during the recent miserable bickerings he had displayed those gifts of conciliation and suasion

[1] *Life of Herries*, ii. 73. [2] *Diaries of Lord Colchester*, iii. 534.
[3] *Peel Papers*, ii. 433, January 9, 1828.
[4] See Roebuck, *History of the Whig Administration*, i. 43.
[5] Much of his success in the Upper House was due to his conciseness. 'The Lords, in the long run,' Greville had warned him, 'prefer brevity to art, sarcasm, and anything else.'

to which Mr. Gladstone long afterwards bore witness.[1] 'Lyndhurst,' he told Lord Coleridge, 'was the great solvent; if there was any difficulty and difference among the Ministers they all deferred to Lyndhurst, and he made it up.'

The new Government began with a sprinkling of Whigs, or, at any rate, of men of Liberal tendencies, but their secession was not long deferred, and the personnel of the Ministry reverted largely to what it had been in the days of Lord Liverpool. But Peel, who led the House of Commons as Home Secretary, initiated a policy of domestic reform and retrenchment, the credit for which has been largely assumed by his successors. And the Chancellor, by his action with regard to the procedure of his own Courts, and by the spirit which he evinced in the general discharge of his duties, showed that the Eldonian atmosphere was being gradually dissipated. It ought to be added that Brougham's famous speech on the state of the common law of the country[2] came as an intimation that the hour was past when law reform could be relegated to the shelf.

Lord Eldon's peculiar views as to the distribution of honours at the Bar had not only caused much dissatisfaction, but had worked great injustice on a number of eminent and deserving lawyers who were kept back from the rank of King's counsel to which their standing entitled them. One of Lyndhurst's first acts had been to call within the Bar a batch of 'leading juniors.' Of these not the least notable was Campbell, to whom Lord Eldon had refused a silk gown some time previously, and who was practically leading the Oxford Circuit in stuff. In April 27, 1827, his wrote to his brother that this preferment was assured—'(1) from my station in the profession; (2) from Copley's regard for me; (3) from his friendship for Scarlett; (4) from the influence of the Attorney-General.' Nor was he mistaken; 'Copley was

[1] *Life of Lord Coleridge*, ii. 218.

[2] Hansard, 2nd ser., xviii. 127. Vide *infra* 283.

exceedingly gracious,' and on June 13 Campbell was duly sworn in as one of his Majesty's counsel.[1] How he repaid Lord Lyndhurst for his 'regard' and 'graciousness' is matter of history. Among the newly advanced members of the Equity Bar, Bickersteth, afterwards Lord Langdale, and eminent among the philosophic Radicals, was perhaps the most conspicuous; he received a special intimation from the Chancellor himself to the effect that his application would be favourably considered.

Brougham was included in the same creation, and his championship of Queen Caroline was thus at last condoned. But his fellow-culprit, Denman, was in far other case. In his speech on the Bill of Pains and Penalties he had been misled into quoting a foul passage from a Greek historian, which, though he afterwards declared that no such insinuation was ever intended by him, conveyed to the minds of nine persons out of ten a most gross imputation upon the King. George IV. was enraged to the last extremity, and he successively forbade both Eldon and Lyndhurst to approach him with Denman's name: a somewhat unnecessary prohibition, one would have thought, in the case of the former. It became Lyndhurst's unpleasant duty to communicate this fact to his old circuit companion and to explain the construction which his sovereign placed on the passage from Dion Cassius. Denman was in despair, and conceived the notion that the Chancellor was not exerting himself sufficiently on his behalf. The powerful aid of the Duke of Wellington, now Prime Minister, was invoked, and at last Lord Lyndhurst was able to inform him that the ban had been removed; but, as the Duke said, with his usual emphasis, 'By G—d, it was the toughest job I ever had.'[2]

There were other directions in which the Chancellor was able to exercise his patronage in a manner regardless of party ties and obligations. For a quarter of a century

[1] See *Life of Lord Campbell*, i. 444.
[2] Martin, 226, and *infra*, 256–7.

Sydney Smith had been the most serviceable man of letters among the Whigs, and in a long series of articles and pamphlets had heaped ridicule on Toryism and all its works. Copley had been his guest, more than once, at Foston-le-Clay, when brought down to York assizes on special retainer.[1] In January 1828 Lord Lyndhurst, 'yielding to private friendship what the Whigs had refused to political loyalty,'[2] appointed him to a prebendal stall in Bristol Cathedral, and thus conferred a favour which, 'from breaking that spell which had hitherto kept him down in his profession,' gave happiness to the recipient out of all proportion to the pecuniary emolument.

Though Macaulay was not yet in Parliament and had not established his claim as the fighting man of his party, he was already famous as the author of the articles on Milton and Machiavelli in the Edinburgh Review, and a vehement opponent of the Government. Lord Lyndhurst appointed him to a commissionership in bankruptcy, worth 300*l.* or 400*l.* a year. It may not unfairly be taken as a delicate tribute to a distinguished Fellow of Trinity, struggling at the Bar, from a former Fellow of that great society, who himself had known the pinch of straitened means and that hope deferred which haunts the chambers of the briefless. But the original suggestion came from Brougham in a remarkable letter:

> Let me strongly advise you to give an early token of favour to young Macaulay; he is the greatest genius now coming into the profession. . . . Make him at once a commissioner of bankruptcy and you do a lasting service to *our* Ministry.[3]

[1] E.g. the *cause célèbre* of Doe dem. Titmouse *v.* Aubrey. [For Sydney Smith's visits to York at assize time, see *Life of Lord Macaulay*, i. 142.

[2] G. W. E. Russell, *English Men of Letters: Sydney Smith*, 125. It was apparently the interest of Lady Lyndhurst which prevailed (*Letters of Lord Dudley to 'Ivy'*, 332).

[3] *Life and Letters of Zachary Macaulay*, 442. How strongly Copley had felt the ties of Trinity may be collected from the fact that on leaving Cambridge he founded an annual Trinity dinner in London, which was kept up for several years. Three years later 'Tom' Macaulay

And in the wider sphere of politics it was soon apparent that Lord Lyndhurst was breaking with the traditions of his predecessor. On June 26, 1827, during the short administration of Canning, the Dissenters' Marriage Bill came up from the Commons. Without particularising any denomination, its main purport was to relieve the Unitarians from the necessity of being married with the rites of the Church of England. On Lord Lansdowne's motion to go into committee Lord Eldon repeated his well-known objections to anything which might make a breach in the walls of the Establishment. Lyndhurst took up a very different line :—There was nothing in the Bill, he declared, which could possibly degrade the clergy or injure the Church; and this doctrine, so novel from the Woolsack, was well received both in the House and out of doors. Lord Eldon, who had moved the rejection of the Bill, was out-voted by sixty-one to fifty-four, and the House went into committee. But Parliament was prorogued on July 2, and the disabilities were not removed until 1836.

In the discussion on the repeal of the Test and Corporation Acts the divergence of opinion was even more glaring. Lord Eldon had been much mortified by the support given to this measure among the peers ;[1] he spoke peevishly and at great length, and endeavoured, by introducing an amendment which restricted the operation of the Bill to Protestants, to throw the Catholic scent across the trail. Lyndhurst, in firm but courteous language, opposed the amendment as being avowedly aimed at the destruction of the Bill, and ventured to say that his predecessor's great legal powers and zeal for the Church

told his sister how he met Lady Lyndhurst for the first time. She said, 'Mr. Macaulay, you are so different to what I expected. I thought you were dark and thin, but you are fair, and, really, Mr. Macaulay, you are fat' (*Life of Lord Macaulay*, i. 118). Lady Lyndhurst seems to have held strong views on the subject of adipose tissue. 'Cradock has left Brighton,' wrote Lady Granville, 'Lady Jersey adores him, Lady Lyndhurst thinks him too fat' (*Letters of Lady Granville*, ii. 52).

[1] Twiss, iii. 38.

were in the present instance 'decidedly mischievous.'[1] Such language, studiously moderate, but coming from a seat where he had long been wont to reign unchallenged, was more than the ex-Chancellor could bear, and in querulous and indignant tones he protested that

were he called that night to render his account before Heaven he would go with the consoling reflection that he had never advocated anything mischievous to his country.

But the House was accustomed to these outbreaks of self-complacency; his amendment was rejected by 177 votes to fifty-five, and the Bill became law. 'I have fought like a lion,' he wrote, 'but my talons have been cut off.' The Act, while emancipating both Protestant Dissenters and Roman Catholics, imposed a fresh disability upon the Jews, for the new declaration, substituted for the old tests, was required to be made 'on the true faith of a Christian.' One of the peers in supporting this clause contended that without it a Jew might become Lord Chancellor. 'Why not?' Lyndhurst was heard to mutter. 'Daniel would have made a very good one.'

A still heavier blow to Lord Eldon's dearest convictions was impending, though the delivery was for the moment stayed. On May 12, 1828, Sir Francis Burdett had carried by a majority of six the resolution that 'it was expedient to consider the state of the law affecting his Majesty's Roman Catholic subjects in Great Britain and Ireland.' And on June 9 Lord Lansdowne, who had regained his freedom and rejoined his old associates,[2] moved a similar resolution in the Upper House. The Government, purged of its Whig leaven, offered an uncompromising resistance, though there were not wanting indications that the water was beginning to trickle through the dyke. Lyndhurst had told Lord Colchester that, as he had formerly thrown out the

[1] Hansard, xix. 43, April 24, 1828.
[2] He had resigned on January 8, 1828.

Roman Catholic Bill in the House of Commons,[1] the ministers now hoped for his help again, and on the second evening of the debate the Chancellor spoke with no uncertain voice, opposing with all his skill and acuteness the grant of the smallest concession.[2]

The motion was rejected by a majority of forty-four, and the triumph of the Catholics seemed further off than ever, but exactly a fortnight later, June 24, 1828, Daniel O'Connell published his address to the electors of Clare, and his return for that county early in the following month marked the beginning of the end of Protestant ascendency. The state of Ireland was growing worse and worse, and the Viceroy, Lord Anglesey, insisted that the only way to pacify the country was to concede emancipation and transfer the agitation to the House of Commons. Peel felt that the hour had come. He strove to resign, but was overruled by the Duke of Wellington and by his Royal master. All through the autumn agitated negotiations were carried on, into the secret of which no other member of the Government, save Lord Lyndhurst, was admitted; and the Chancellor became convinced that 'it was much better to concede quietly and with good terms what cannot be prevented.'[3] Finally it was agreed to await the reassembling of Parliament in the new year before making any decision as to the course of action.

By that date Lord Anglesey had been recalled, and Ireland was on the brink of civil war. A reluctant consent in writing to the introduction of a Relief Bill was obtained from the King, and Peel devoted himself to the preparation of measures for the suppression of the Catholic Association, for the removal of the disqualifications attached to Roman Catholics, and for the regulation of the franchise in Ireland. The secret

[1] By his casting vote on May 24, 1813; see Erskine May, *Constitutional History*, iii. 142.

[2] Hansard, xix. 1246.

[3] *Lord Ellenborough's Diary*, i. 284; cited by Martin, 254.

was kept until the reading of the King's Speech on February 5, 1829, and then the storm broke. On February 20 Peel resolved to take the opinion of his Oxford constituents and applied for the Chiltern Hundreds. After a contest chiefly memorable for the fact that it roused John Henry Newman into public life, and after unprecedented scenes of riot and uproar in the Convocation House, he was beaten by Sir Robert Inglis and forced to take refuge in the pocket borough of Westbury.

The verdict of the University reacted on the vacillating mind of the King, over whom the Duke of Cumberland was exercising his sinister influence. On March 3 he sent for Lyndhurst to Windsor, declared that he had not been made aware of all the provisions of the Relief Bill, that the securities did not satisfy him, and that he would not consent.[1] The Chancellor could do nothing with him, and drove over to Strathfieldsaye, where the Duke of Wellington was entertaining the judges. The next day they were both summoned to Windsor together with Peel, and the King told them that rather than consent to the repeal of the Oaths of Supremacy he would abdicate. One after another the three ministers tendered their resignations, which were accepted; their Royal master gave them a salute on each cheek, and they returned to London to tell the news to their astonished colleagues. But the morning brought wisdom, a messenger arrived begging them to withdraw their resignations—the King had surrendered at discretion, and that evening, March 5, Peel introduced the Catholic Emancipation Bill into the Commons.

Since the beginning of the session, when it became apparent that the Government were going to give way, the Tory right in the House of Lords, headed by 'that hard-bitten old dog,' Lord Eldon, had missed no opportunity of harassing Ministers. But the Chancellor was prepared to maintain his position in the teeth of all

[1] Greville, i. 181.

comers. On February 19 he declared that he should ill deserve the high situation in which he had been placed by the kindness of his gracious Majesty if he could join in advising any measure which could endanger the interests or well-being of the Protestant Constitution.[1] And on March 13, after the Bill had been read a second time in the Commons, he was prepared to maintain 'that the Roman Catholics of Ireland were ready to support the Constitution as strenuously as the Protestant people of Great Britain. It was on account of his confidence in them that he gave his support to this measure.'[2]

Such a thoroughgoing conversion to the views of O'Connell was not likely to pass uncensured, and in the Commons his former colleague, Sir Charles Wetherell, launched a violent and brutal attack upon the Chancellor. Eyewitnesses have described Wetherell's oratory when under the influence of strong emotion; how,

> with uncouth gestures, loose, slovenly and unbraced dress, he bent his body to the range of the bench from which he spoke, turned his back fairly to those who sat in front of him, grinned at those seated behind him, swung his arms wildly to and fro, and foamed at the mouth, declaring that *he* was not in one year a Protestant Master of the Rolls and the next a Catholic Lord Chancellor. *He* had no speech to eat up. *He* had no apostasy to explain. *He* had no paltry subterfuge to resort to. And so the torrent of invective flowed on *ad nauseam*.[3]

The Relief Bill passed the Commons on March 30, and on April 2 the Duke moved its second reading in the Lords. On the following evening Lord Lyndhurst rose to offer his support to the measure which he had so strenuously opposed a few months earlier:

> Looking at this measure both on a religious and political principle, he was sure it would put an end to the contentions and animosities which had prevailed in Ireland, and that it would operate to the advantage of the Protestant Church

[1] Hansard, xx. 386. [2] *Id.* 1027. [3] *Law Review*, v. 147.

and the Protestant religion. . . . He had been from his earliest youth taught to look up to the doctrines of his religion as pure and rational; he had always been taught to believe that it was impossible for any man who approached, with an impartial and an unbiassed judgment, to the consideration of these doctrines, and who fairly lent his mind to them, not to acknowledge their truth and to embrace them. Everything since had served to convince him still more of the correctness of that opinion, and he was sure, if the disabilities affecting the Roman Catholics were once removed, and Catholics and Protestants put upon an equal footing, that the Catholics, instead of exhibiting a stronger tendency to undermine the Protestant religion or the Protestant Church, would most probably come over in great numbers to the reformed faith.[1]

Did Lord Lyndhurst really believe this? If so,

Falsa ad cœlum mittunt insomnia Manes,

and we have another most eminent example of the incapacity of the English temperament to understand the Irish nature or to assimilate the lessons of Irish history. The speech, taken as a whole, was an eloquent and impressive piece of Nisi Prius oratory, but it was received, in the words of Lord Falmouth, who followed the Chancellor, 'amid the expressive silence of the larger portion of the House.' And Lord Winchilsea, comparing it with Lyndhurst's utterance on the previous June 10,[2] declared that he knew no parallel to the delivery of two such speeches by the same man within a year except the delivery of a woman in Kent, who was brought to bed of a white baby and a black baby at one birth.

'Did the noble and learned Lord know this last year?'

interposed Lord Eldon as Lyndhurst demonstrated by a series of historical citations that during more than a century of Protestant sovereigns from Elizabeth to William III. there had been no exclusion of Roman Catholics, *eo nomine*, from Parliament or from office.

[1] Hansard, xxi. 140.

[2] *Supra*, 62.

I did not, replied the Chancellor, but I have since been prosecuting my studies. I have advanced in knowledge, and in my opinion even the noble and learned lord might improve himself in the same way.

'The sally' is alleged by Campbell to have 'set the House in a roar;' but it seems to me a cheap retort, unworthy of the speaker and of the occasion. Indeed, it is impossible to place Lyndhurst's record on the Catholic question in any favourable light. It is futile to suppose that an interval of a few months and a little elementary study of legal and political history were the effective cause of his finding salvation. He would have done better had he imitated the manly brevity of the great Duke, who frankly admitted that the Bill was grounded on 'the difficulty, nay, the impossibility, of finding any other remedy for the state of things in Ireland.'[1]

Lyndhurst's change of front was not more sudden or more violent than that of Wellington and Peel, but his apology was wanting in their sincerity. His detractors have declared that now for the first time he gave vent to his genuine sentiments; to my mind, *pace* Mr. Bagehot, the real man is to be found in the speeches of 1827 and 1828. The injustice of the Catholic disabilities has been so long acknowledged that it has become difficult to deal out fair measure to the Eldon and Perceval school which regarded them as our palladium. But it ought to be remembered that those who opposed emancipation were far more accurate in their forecast of the consequences than the party of enlightenment and progress. As Lord Melbourne afterwards said, 'The worst of it is the fools were in the right.' That the Act would have any effect in Great Britain beyond enabling a handful of Roman Catholic peers to take their seats in the Upper House seemed vain imagination; before five and twenty years had elapsed the flower of the Whig party was passing

[1] Hansard, xxi. 46.

the Ecclesiastical Titles Act and trying to persuade the country that its faith and liberty were being endangered by Papal aggression.[1] The notion of a Roman Catholic Chief Justice sitting in Banc with a Roman Catholic puisne on either side of him, of a Roman Catholic Viceroy of India, of a Roman Catholic Home Secretary, would have been scouted as contemptuously as the vision of the stately fanes at Brompton and Westminster, as the reception in England of the monastic Orders which France has cast out, as the procession through London streets of the Guild of Our Lady of Ransom. The Act came twenty-nine years too late to pacify Ireland, and it set that evil precedent of yielding only to force which has dogged all our efforts at conciliation. Making all allowance for the difficulties of their position, the Tory leaders dealt a blow to consistency in public life which has brought fruit in disastrous abundance. Upon no reputation did the surrender weigh so heavily as upon that of Lord Lyndhurst.

The second reading was carried in the Lords by a majority of 105, the third reading by 104, and the Royal Assent was given on April 13. 'After all I had heard in my visits, not a day's delay. God bless us and His Church,' wrote old Eldon to his daughter. The ex-Chancellor had fought against the Bill to the last, both in the House, and behind the backs of Ministers in the royal chamber. And this latter fact was probably the source of the bitterness which during the later stages of debate characterised some of the passages at arms between Lord Lyndhurst and his predecessor on the Woolsack. 'Mischievous and disingenuous' are the epithets applied by Lord Ellenborough to the tactics of the latter, though there was a feeling out of doors that Eldon's age and long services entitled him to less vigorous treatment.[2]

[1] There is an instructive passage in Campbell's *Life of Brougham* 361, which expresses the resentment of the old Whigs at the perversity of the Roman Catholics in refusing to be content with the mere removal of disabilities. [2] Twiss, iii. 78.

That the honours of debate rested with the Chancellor no one disputed, and he soon had the opportunity of making amends for any deviation from the serene courtesy that was so habitual to him. In the course of the following month he laid on the table of the House of Lords a Bill for 'facilitating the administration of justice in the Court of Chancery;'[1] in the course of his introductory statement he referred in graceful sentences to the injured Nestor, and the latter, not to be outdone in generosity, protested that whatever might have been the political difference between himself and the noble Lord, he was not the person unwilling to be reconciled. And so was healed the only breach which ever existed in the cordial relations between them.[2]

The Bill for the reform of the Court of Chancery, on which Lord Lyndhurst was now embarked, was a carefully elaborated, if still a somewhat halting and tentative, measure. He had gained experience by two years at the Rolls and on the Woolsack, and though his rehearsal of the defects of equitable jurisdiction and procedure was necessarily a twice-told tale, his gift of lucid exposition carried him lightly through the task. Following in the main the suggestions of the Commissioners of 1825, many of which, as he informed the House,[3] had now been adopted by the simple means of making them Rules of Court, he disclaimed all intention of interfering with the initial stages of a suit. The form of bill and answer was not susceptible of improvement, nor was it deemed desirable to introduce oral evidence into the process of examining witnesses. It was to reforms in the hearing of the cause itself, a subject which, in his judgment, had been somewhat neglected by the Commissioners, that his main efforts were directed. He recommended that the Crown should have the power to appoint a new judge who should be a member of the Court of Chancery, and should hear such causes, motions, &c., as, in the ordinary way, came before the Chancellor and the Vice-Chancellor; and

[1] Hansard, xxi. 1280. [2] See Martin, 209. [3] Hansard, xxi. 1277.

that to him should be transferred the Equity jurisdiction of the Court of Exchequer, which was in an even more unsatisfactory condition than the Court of Chancery itself. He further proposed to relieve the Master of the Rolls from his position as a mere journeyman of the Chancellor, to give him a well-defined sphere of his own, and to abolish the evening sittings in the 'dark little Court out of Chancery Lane, with its forlorn group of jaded counsel and anxious clients.' [1]

After a qualified approval from Lord Eldon the Bill was read a second time, but in the debate on the third reading the ex-Chancellor indulged in a studied jeremiad. The Master of the Rolls, it appears, had refused point blank to undertake the additional duties imposed by the Bill, and the Lord Chief Baron had given him, only that morning, a most formidable account of the effect of putting an end to his Equity jurisdiction. Lyndhurst pointed out that the Bill before the House was limited to the appointment of an additional judge in Chancery, and that the ancillary provisions would be deferred until the next Session. The Bill was read a third time, but Parliament rose on June 28, before it could even be introduced into the Commons.

The Chancellor, however, refused to be discouraged, and on March 22 in the following year (1830) he moved the first reading of a new Bill 'to facilitate the administration [2] of justice in the Courts of the Country' without any special reference to Chancery. This was a

[1] Lord Lyndhurst took the opportunity to express disapproval of the 'practice of counsel going from one Court to another, and being actually engaged in carrying on causes of importance in two Courts at the same time. In many instances this practice is carried to such an extent that the leading counsel, while he is pronouncing the last sentence of his address to the Bench, has his bag in his hand in order that he may be able to leave the Court instantly, and hurry to the other in order to take up another cause.' The usage by which Chancery silks are obliged to attach themselves to one of the Courts of first instance is an echo of this protest. One is tempted to wonder if Sir John Copley or Mr. Serjeant Copley had ever heard of such an abuse in the Common Law Courts.

[2] Hansard, xxiv. 614, 674.

far more ambitious measure than its predecessors, and is in itself no small monument of the endeavours of Lord Lyndhurst to sweep away the more glaring abuses of the legal superstructure. In his introductory speech he gave a retrospect of what had already been effected by the Government. In the region of criminal law they had abolished the cumbrous and inconvenient appendages of benefit of clergy and the like, and, thanks to the efforts of Sir Robert Peel as Home Secretary, they had to a great extent consolidated the law dealing with offences against the person, with larceny, and with forgery. They had caused to be repealed no fewer than four hundred penal statutes and taken away the punishment of death from nearly three hundred offences. They now had in active preparation Bills for the simplification of procedure in the three Courts of Common Law, and for curtailing the luxuriance of special pleading. The substantial proposal, which was all that he should submit to the House for the present, was to detach the Equity business from the Court of Exchequer, and by appointing an additional judge in Equity to relieve the other Chancery Courts. They intended in the immediate future to abolish the Welsh jurisdictions,[1] to throw Wales into the Circuit system, and appoint an additional judge to each of the Courts of Common Law to cope with the increased work. It was in further contemplation to extend the jury system in Scotland, to grapple with the procedure and administration of the law in the Ecclesiastical Courts, and to initiate sweeping reforms in the offices of the Masters and Clerks in Chancery.

The third reading was taken on May 26; Lord Eldon moved a procrastinating amendment, which was defeated by a majority of seven: contents four, not-contents eleven. Law reform was evidently somewhat of a drug in the Upper House. In the Commons the Bill encountered the fierce hostility of Sir Charles Wetherell, who

[1] This reform was actually accomplished by 11 Geo. IV. and 1 Wm. IV. c. 70.

was burning to pay out the Chancellor for his surrender over the Catholic claims; he chose to represent it as being, not only 'one of the most noxious, pestilent and mischievous measures that had ever been introduced,' but as intended simply for the personal convenience of the proposer. He caught hold of the circumstance that no style or title was conferred by the Bill upon the new judge:

He knew not by what name he was to be called, whether the Orderly of the Lord Chancellor or by some other appellation; the existing nomenclature of the Courts of Equity was exhausted, and it would, of course, be necessary to find out a new name for him. Why, Lord Thurlow had no Vice-Chancellor, no Jack Rugby, no anonymous Judge to perform his duties for him; he was therefore obliged to rouse himself to diligence and exertion, and in a very short space of time labour and discipline made him an Equity Judge.

And then, referring to Romilly's deep-rooted objection to the creation of a Vice-Chancellor in 1813, he launched a most venomous attack on Lord Lyndhurst:

The telescopic eye of Romilly foresaw in imagination the case of some Shaftesbury, some hackneyed intriguer, some debating politician, hackneyed in debate and hackneyed on both sides of the question, hackneyed here and hackneyed there, the ready tool of any party—the possibility of such men attaining to high places.[1]

Brougham somewhat capriciously flung his weight into the same scale, and though Wetherell's amendment was lost by twenty-one votes, the tide of public opinion was turned against the Bill. The death of the King was followed by the dissolution of Parliament, and the unfortunate measure failed to reach a second reading.

For a lawyer who had never held a brief in Chancery to take up the mantle newly fallen from the shoulders of a profound master of the science and practice of Equity was a formidable task, and one to which, twenty years

[1] Hansard, xxv. 219.

earlier, Erskine had proved unequal. But the judgments pronounced by Lord Lyndhurst during his first term of office bear testimony to his rapid grasp of principle, his vigorous mind, and his power of lucid and orderly statement.[1] When he went out of office in 1835 it was written in one of the legal periodicals [2] that

capacity, aided by experience, has now redeemed the earlier awkwardness, if we may say so, rather than the inefficiency, of Lord Lyndhurst, and his name, as a great Equity judge, may not undeservedly be associated with those of the brightest of our Chancellors. But in his early days he brought more of ornament than of very powerful relief to the then oppressed Court ; and its business was perhaps never in a more unsatisfactory state than under the triumvirate of Sir John Leach, Sir John Copley and Lord Eldon.

The context clearly limits those days of 'awkwardness' to Copley's short spell of office at the Rolls, though even there it was said of him that in point of eloquence and in the consideration he enjoyed he was the equal of Sir William Grant. And Mr. Twiss [3] attributes to him in an equal degree with Lord Eldon the rare and high power of holding his mind until the very close of all the arguments, unbiassed for or against any view of the case or any part in it, and open to any light from whatever quarter.

If, as some assert, he showed undue subservience to Sir Edward Sugden, it was only in the days of his novitiate. No man was ever less prone to tolerate another as master in his Court.

[1] The causes determined by Lyndhurst during his first term of office are contained in vols. iii. to v. of Russell, and Russell and Mylne. A gleam of his humour is worth preserving. In the leading case of the King of Spain against *Hullett and Widder* he had decided that a foreign sovereign could maintain a suit in an English Court, but that the proceedings must be in his name, and that an ambassador cannot sue on behalf of his sovereign. 'Ought not the King of Spain to have his costs?' applied Sir Charles Wetherell. 'We will not disparage the dignity of the King of Spain by giving him costs,' was the Chancellor's reply. *State Trials*, N.S. ii. 320 *n*.

[2] *Law Magazine*, xvi. 15.

[3] *Life of Eldon*, ii. 300.

Twice during these years of office Lord Lyndhurst felt himself compelled to invoke the aid of the law against libellers. There was never perhaps in our history a period when the metropolitan Press had greater license or abused it more grossly.[1] The Government was unpopular, and Lyndhurst, from his conspicuous position, and it must in fairness be added from the widespread suspicions as to his political sincerity, was a target for a series of libels, which, so long as they only repeated the idle stories of debt and bailiffs, he treated with calm contempt. When, however, the 'Atlas' accused him of selling his Church preferments, he promptly filed a criminal information, with disastrous consequences to the slanderers, and a few months later [2] he also obtained a conviction against the 'Morning Journal,' which went so far as to charge him with receiving 30,000*l.* from Sir Edward Sugden as the price of the Solicitor-Generalship. The wisdom of his conduct in instituting these prosecutions was questioned by some of his friends, and Greville stigmatised the proceedings against the 'Atlas' 'as egregious folly,' an opinion which was shared by Denman.[3] But the Chancellor was most assuredly bound to mark down for punishment any assault on his public honour, however much he might disregard private and personal calumnies. No statesman of his time held larger or more liberal views as to the legitimate freedom of the Press. As Attorney-General he had abstained

[1] Strong language was contagious, and Southey writes in the *Quarterly Review*, xliv. 299, of those 'skunks and foumarts of the Press . . . professors of scurrility, the sedition mongers, the licensed dealers in blasphemy,

> "the scum of men,
> The ulcers of an honest state, spiteweavers
> That live on poison only like swollen spiders."'

[2] June 26, 1829.

[3] *Life of Denman*, i. 259; Lord Ellenborough (*Diary*, ii. 50) regarded the 'Atlas' invention as 'an arrow from the Cumberland quiver.' The Duke of Cumberland had some little time previously offered a gross insult to Lady Lyndhurst in her own drawing-room. See Greville, i. 222, *et seq.*, and Princess Lieven's *Letters to Lord Grey*.

on principle from interference with the public discussion of political topics, and not a single *ex-officio* information was filed by him in that capacity; while as Chancellor he incurred the rebuke of the Quarterly Review for repealing the 'Banishment' Act which imposed restrictions and penalties on newspaper editors.[1]

[1] *Quarterly Review*, xliv. 299; Hansard, xxv. 1275. Bennett (*Biographical Sketches*, 209) tells a curious story of Copley's intervention as Solicitor-General to stop the proceedings in a criminal information against O'Meara, the author of the *Voice from St. Helena*, which might have exacerbated our relations with France.

CHAPTER IV

LYNDHURST AS CHIEF BARON—PARLIAMENTARY REFORM

1830–1832

THE death of George IV. on June 25, 1830, put an end to a Parliament which under the Septennial Act had still nearly three years to run. Things had not gone smoothly for the Government in the past Session; they had suffered more than one humiliating defeat in the House of Commons, and had been indebted for their continued existence to the support of the Whigs, and on occasion even of the Radicals. The sullen indignation of their supporters threatened to develop at any moment into open mutiny, and the omens were anything but favourable when Parliament was formally dissolved on July 24. Before the ink was dry on the election addresses the Paris Revolution which substituted Louis Philippe for Charles X. had sent a thrill of sympathetic delight through the English reformers. The 'Times' vied with the Edinburgh Review in heaping insults upon the fallen monarch and congratulations upon the sovereign people. The Sailor King was in the first flush of a transient popularity, and the odium which might easily have found vent against the occupant of the throne transferred itself to his Ministers, who were known to have small sympathy with the new dynasty in France or with the insurrection that had broken out in Belgium. For reasons highly creditable, but not very judicious, they declined to exert their customary influence in the Government boroughs, while in the counties and in the few urban constituencies where the franchise was unrestricted, the supporters of the Duke and Sir Robert

sustained a series of disasters. When Parliament met in the autumn the Government, though still retaining a majority, had lost fifty seats.

If the King's Government was to be carried on by his present advisers, it was clear that fresh blood must be introduced. Sore and disgusted with the Tory malcontents, the Duke turned to the Canningites, and even thought of approaching Lord Grey.[1] It is difficult, in the light of subsequent events, to realise how nearly the Tory and Whig leaders were approximated at this epoch.[2] Lady Lyndhurst told Greville that her husband was trying all he could to bring the Duke and Lord Grey together ;[3] but it was evident that parliamentary reform would be the crucial difficulty in the way of a coalition. The Birmingham Political Union had begun its agitation for the transfer of seats in Parliament to the large towns, a scheme to which the Whigs, as a party, already stood platonically committed, and Henry Brougham, whose prestige had been vastly increased by his triumphant return for Yorkshire, was said to be deep in the elaboration of a Bill for the better representation of the people. On the other hand, the sense of the country was so generally in favour of a 'moderate reform' that there seemed no reason why the statesmen who had granted Catholic Emancipation might not again be persuaded to swim with the tide ; and in the case of parliamentary reform they were much less heavily weighted by previous pledges.

Shortly before the opening of Parliament negotiations, coming from the Whig camp, had been opened between Mr. Littleton[4] and Mr. Arbuthnot, the *fidus Achates* of the Duke, when the latter sealed his own fate and that of his party by one of those 'blazing indiscretions' not un-

[1] Sir Herbert Maxwell, *Duke of Wellington*, ii. 252, from Salisbury MSS.

[2] *Life of Lord Brougham*, iii. 70.

[3] *Letters of Princess Lieven*, 244 ; Greville, ii. 93.

[4] Son-in-law of the Marquess of Wellesley, and afterward Secretary for Ireland, raised to the peerage as Lord Hatherton, *vide infra*, 329.

familiar to the henchmen of Tory chiefs. On November 5, while the speech from the throne was under discussion in the House of Lords, Earl Grey made a modest and tentative reference to the necessity of reforming Parliament. Whereupon the Duke, in words that have become historical, said that, so far from being prepared to bring in any measure of the description alluded to by the noble Lord, he would at once declare that, while he held any station in the Government of the country, he should always feel it his duty to resist such measures when proposed by others.

The Duke's declaration had an effect which has been produced by few bursts of oratory: it brought the funds down next morning from 84 to 80. Among his colleagues it fell like a bombshell, for there were few of them who had concealed their belief that some measure or other of parliamentary reform was necessary. As he sat down the Duke turned to Lord Aberdeen and asked, 'I have not said too much, have I?' 'You'll hear of it,' answered the travelled Thane laconically, and then, as the hum of agitated comment grew louder, the Duke enquired again what it all meant. 'You have announced the fall of your Government, that is all,' was the reply of another colleague, whom legend reports to have been Lord Lyndhurst.[1] And the next morning the Chancellor said to his wife,

'You have often asked me why the Duke did not take in Lord Grey; read these two speeches, and then you will see why. Do you think he would like to have a colleague under him who should get up and make such a speech after such another as his?'[2]

Before the echoes of the Duke's speech had died away, he found it his duty, with the assent of his colleagues, to advise the King and Queen to postpone

[1] See Earl Russell's *Recollections*, 62, 76, and Martin, 272.
[2] Greville, ii. 53.

their visit to the Mansion House on November 9.[1] Down went the Funds again to 77, and the ease with which the new police suppressed some trifling attempts at disturbance brought merciless ridicule on the Ministry. The Government had clearly become impossible, and on November 15, in a full House, they were defeated by a majority of twenty-nine on a motion by Sir Henry Parnell for the appointment of a select committee to consider the Civil List. The tug of war had not been expected till the next evening, for which Brougham had put down his resolution on reform.[2] There were persistent rumours that, in spite of the Duke's declaration, the Government would meet the question 'with a sort of concession, the members for the great towns perhaps,' and Lady Lyndhurst assured Lady Granville that the Duke meant to 'swallow reform.' The Duke's prompt resignation on the morning following his defeat is proof conclusive against any such notion, but the mere fact of its existence shows the havoc wrought in his political reputation by the *volte-face* on the Catholic claims.

Lyndhurst could hardly expect to fare better at the hands of the gossips. 'There has been a strong idea,' records Greville on the 17th, when it was known that the King had sent for Lord Grey, 'that the Chancellor

[1] 'Granville dined at the Lord Chancellor's yesterday. The Chancellor came in, after they were all seated, from a Cabinet that had lasted five hours, returned to be at it again till two, and the result you see in the papers' (*Letters of Lady Granville*, ii. 63). The Duke is said to have been misled by Peel, whose information as to the practical certainty of disturbances came from a well-known City Radical.

[2] Vide *infra*, 288: 'But not on the threatened question was that eventful campaign of party decided. The Government fell less in battle than in skirmish. Prosy and few were the speakers. All the Government silent, save the Chancellor of the Exchequer and another business-like person connected with the Board of Trade, whom the House would hardly condescend to hear. The House was in no mood to think of facts and figures. Early in the evening, between nine and ten, the Speaker's sonorous voice sounded: "Strangers must withdraw"' (*My Novel*, Book X. ch. xv.).

would keep the Seals.'[1] And it is a striking proof of the suspicion which he had inspired that the Diarist added, a day or two later,[2]

Lyndhurst's resignation with his colleagues, together with his not being invited to join the Government, has restored him to the good graces of his party. He means now to set to work to gain character.

There is indeed a good deal of evidence for believing that Lord Grey would have liked to retain Lyndhurst as his Chancellor. Up to the actual introduction of the Reform Bill the line of demarcation between the old Whigs and the moderate Tories was still narrow. Lyndhurst had found no difficulty, during the space of a single twelvemonth, in holding the Seals under Canning, Goderich, and the Duke of Wellington. 'As we didn't come in with the Duke, I don't see why we should go out with him,' the Chancellor's secretary said to Campbell on the morning of the crisis. Throughout the last few weeks Lyndhurst had made no secret of his discontent with the Duke's obstinacy, and of the impossibility of their facing the Session without some reinforcement. His general attitude had been one of detachment, and Princess Lieven described him as the only man of real ability in the administration, but taking small part in politics.[3] Moreover, the Whigs were utterly unprovided with a suitable candidate for the Woolsack; and the intimate friendship which existed between Lord Grey and Lady Lyndhurst lent additional colour to the story.[4] Hayward

[1] Greville, ii. 68; cf. Croker, ii. 76. [2] ii. 75.

[3] Princess Lieven's *Letters*, 138.

[4] 'About three years ago Lyndhurst was the man in the world whom Lord Grey abhorred the most; it was about this time that I well recollect at Madame de Lieven's I introduced Lord Grey to Lady Lyndhurst . . . very soon all his antipathies ceased, and he and Lyndhurst became great friends. This was the cause of Lady Lyndhurst's partiality for the Whigs, which enraged the Tory ladies and some of their lords so much' (Greville, ii. 88, December 1830). Lyndhurst's friendship with the Princess Lieven was not unchequered. She had been attracted to him originally in June 1828, because she found him, as she declared, the only partisan of Russia in the Cabinet.

asserts authoritatively that the Premier had resolved upon offering the Seals to her husband, when the design got known at Brooks's, and that three leading members of the Whig party, of whom the Duke of Bedford was one, formally waited on Lord Althorp to remonstrate. The project was given up, apparently without having been communicated to Lord Lyndhurst.[1]

At any rate, no formal offer was ever made to him, and a solution was found for the problem of the Chancellorship in the person of Brougham. On November 17 the outgoing Chancellor made his adieux to the Bar by a message which Sir William Horne, the new Solicitor-General, delivered in Court amid general expressions of regret, for his courtesy, patience and fairness had endeared him to both branches of the profession. The change in his fortunes was great: it involved a loss of income amounting to over 10,000*l.* a year, and the retiring pension of 4,000*l.* was utterly inadequate to the mode of life both of Lady Lyndhurst and himself,[2] while it is to be remembered that there were other members of his family still dependent upon him. But he put a brave face upon a catastrophe which he had seen impending for months past. He had no belief in the stability of the new administration, and there was still abundance of opportunity for one whom Greville described as 'about the ablest public man going and nearly the best speaker.'

A year later she was violently angry with him over what Lord Grey called *la forte méchante affaire* of her friend the Duke of Cumberland (*supra*, 73, *n.*). 'I could not have imagined,' she wrote to Grey, 'that any creature existed so vile and so mean as the Chancellor has shown himself to be,' a point of view, however, which her correspondent strongly controverted (*Correspondence of the Princess Lieven and Earl Grey*, i. 272 *et seq.*). They were soon friends again, and according to the Princess she was the recipient through him of many ministerial confidences. She mentions what I do not find recorded anywhere else, that when staying at Walmer Castle with the Duke of Wellington in August 1830, Lord Lyndhurst had a narrow escape from drowning, and that Lady Lyndhurst had a *fausse couche* in consequence (*Correspondence*, i. 284).

[1] *Quarterly Review*, cxxvi. 48.

[2] See *The Letters of Richard Ford*, ed. by R. E. Prothero, 17.

He was not destined to be out of harness for more than a few weeks. It rests on Brougham's authority that the new Attorney-General and Solicitor-General, Denman and Horne, took their offices with notice that, if a vacancy arose in one of the chief judgeships during the next few months, they must not be offended if Lyndhurst and Scarlett were promoted over their heads. The ex-Chancellor was only fifty-eight; his splendid intellectual powers were at their prime, and the Bench was not overburdened just then with any superfluity of judicial talent. The Chief Baron, Sir William Alexander, was known to be contemplating retirement, and Lord Grey, not uninfluenced, we may conjecture, by private friendship, and by the hope of neutralising Lyndhurst's opposition in the Lords, lost no time in offering him the post, worth 7,000*l.* a year. There were technical difficulties in the way. The office, as Brougham justly pointed out, was in the gift of the Chancellor, not the Premier;[1] but he gladly acquiesced in the choice of an old friend. Then the Chief Baron changed his mind, and it was not until January 12 in the following year that the formalities were complete.

Lyndhurst had not accepted without full consideration, and until he had received the hearty approval of his former colleagues, the Duke, Sir Robert Peel, and Lord Aberdeen, though, in a letter to his wife, he expressed a fear that he would be exposed to much obloquy and abuse.[2] The appointment gave a satisfaction which was not diminished in the eyes of the friends of retrenchment by the fact that his pension was thus saved to an impoverished nation. How it was viewed by a cynical observer appears in the following extract from Greville's Diary:

The proposal is tempting to a necessitous and ambitious man. On the other hand, he had a good game before him if he had played it well, and that was to regain character, exhibit his great and general powers, and be ready to avail

[1] *Life of Lord Brougham*, iii. 38. [2] Martin, 274.

himself of the course of events ; but he has made his bargain and pocketed his pride. He takes the judicial office upon an understanding that he is to have no political connection with the Government (though, of course, he is not to oppose them), and to be Lord Chief Justice after Tenterden. This is the secret article of the treaty. He is now in a position in which he may join with either party, and that without any additional loss of character.[1]

It is hazardous to follow Greville when he talks of 'secret articles.' When Lord Tenterden died in November 1832, Lyndhurst was the Tory protagonist in the House of Lords ; for however much Lord Grey may have persuaded himself that the Chief Baron's mouth would be sealed, the introduction of the Reform Bill put an end to all suggestion of muzzling, and to any tacit understandings. And Brougham, at any rate, was under no delusion as to what Lyndhurst's action would be on emergency. Greville's bitterness, however, is an unhappy confirmation of the distrust from which he never completely succeeded in shaking himself free. Another view is recorded by Campbell, in a letter written on the day of the appointment : 'It is said to be arranged that when Copley resumes the Great Seal, Brougham is to be Chief Baron, and so alternately, like Councillors in a Scotch corporation.' Campbell was nearer the truth than he supposed.

Lyndhurst's term of office in the Exchequer was an unqualified success ; that tribunal had of late years been sinking in the public estimation, and the Commissioners to enquire in the working of the Courts of Common Law had dealt caustically with it. During the five years 1826–30 only five hundred causes had been tried in it as against 11,000 in the King's Bench, and the position of the Barons had become almost a sinecure. Lyndhurst effected a rapid change, and with the assistance of such able puisnes as Bayley and Alderson brought back the flow of business until, in Brougham's language,[2] he had

[1] Greville, ii. 89. [2] Martin, 277, and *vide* Greville, iii. 71.

founded anew the Exchequer 'with an *éclat* and a lustre which the Committee on the Courts could hardly have expected when they made their report.'

I did not regularly practise before him, writes Campbell,[1] but I often went into his Court, particularly in revenue cases, after I became a law officer of the Crown, and as often I admired his wonderful quickness of apprehension, his forcible and logical reasoning, his skilful commixture of sound law and common sense, and his clear, convincing and dignified judgments. He was a great favourite with the Bar on account of his courtesy, although he has told me that he acted upon the principle that 'it is the duty of a judge to make it disagreeable to counsel to talk nonsense.'

On the Bench his lips would often be seen to move, but no sound proceeding from them would be heard by the Bar. The associate sitting beneath him could tell another tale: the classic instance is that of 'General'[2] Watson. 'What a d——d fool the man is!'—then, after an interval, 'Eh, not such a d——d fool as I thought;' then another interval. 'Egad, it is I that was the d——d fool.' Like most judges, he was especially tolerant to the litigant in person. Mr. Cleave, on being tried in the Court of Exchequer, began his speech by remarking that before he sat down he should, he feared, give an awkward illustration of the truth of the old adage that he who acts as his own counsel has a fool for his client. 'Oh, Mr. Cleave,' said the Lord Chief Baron, 'don't you mind that adage, it was framed by the lawyers.'

He took a special pleasure, apparently to Campbell's surprise, in discharging the social obligations of his office on Circuit, in receiving at dinner the Bar and the Grand Jury, and in laying himself out to entertain the junior counsellors and the country squires with as hearty goodwill as if they had been the elect of fashionable London. He was not unfrequently accompanied by Lady Lynd-

[1] *Life of Lyndhurst*, 71.

[2] So called because he had fought at Waterloo. He himself became a Baron of the Exchequer in 1856.

hurst, and members of the Bar who went Circuit during the later years of a Chief Justice now deceased will understand how much the presence of a charming and beautiful woman can tend to soften the asperities inseparable from a long day in the Courts, and to promote the pleasure and comfort of all who are brought in contact with the judicial party.

Campbell further asserts that Lyndhurst would not heartily give his mind to his judicial business, and that his opinion was of small weight in Westminster Hall. We have seen that he was strongly of opinion that judges ought not to be mere lawyers and nothing else, and that they should have time and leisure for liberal studies. The best commentary on his proceedings on the Bench is supplied by Campbell's own account of the way in which he tried the case of Small *v.* Attwood.[1]

It arose out of a contract for the sale of iron mines in the County of Stafford, and the question was whether the contract was vitiated by certain alleged fraudulent representations of the vendor. The leading counsel had a brief endorsed with a fee of 5,000 guineas; many days were occupied in reading the depositions and weeks in the comments upon them. The Chief Baron paid unwearied attention to the evidence and the arguments, and at last delivered (by all accounts) the most wonderful judgment ever heard in Westminster Hall. It was entirely oral, and without even referring to any notes, he employed a long day in stating complicated facts, in entering into complex calculations, and in correcting the misrepresentations of the counsel on both sides.[2] Never once did he falter or hesitate, and never once was he mistaken in a name, a figure, or a date.

[1] *Life of Lyndhurst*, 72, and vide *infra*, 421.

[2] This is how Lord Campbell thinks fit to speak of his old friends Wilde and Sugden. In 1838 the judgment, delivered on the Equity side of the Exchequer, was reversed in the House of Lords. Lyndhurst took part in the hearing and stuck to his original opinion that an amount of misrepresentation had been practised by the vendors which annulled the sale. The majority was of opinion that if the purchasers had paid too much for the property it was their own fault. The casting vote for reversing the decree was given by Lord Devon, who had never held

Indeed, one of the most remarkable of Lord Lyndhurst's gifts was a memory retentive beyond the ordinary, which he had trained assiduously, and which enabled him both on the Bench and in Parliament to dispense entirely with the accompaniment of written notes. The mere exercise of writing is said to have been always irksome to him, and he never wrote a letter when he could avoid it. The attempt to take notes on the Bench distracted his mind beyond endurance. His chief clerk had orders to reproduce the evidence *in extenso*, and the Chief Baron was thus enabled to concentrate his mind upon the case, to sift and analyse in his own mind the facts and speeches as they fell from the lips of witness and counsel. He rarely or never interrupted the latter, and he was invariably ready, at the close of a case, to present it to the jury 'with incomparable brevity and lucidity.'[1] Early in life he had conceived a strong prejudice against those summings up after the manner of Mr. Justice Stareleigh, which consisted of a mere reading over of notes; and he had amused his briefless days by mentally digesting the evidence in any case which he might happen to listen to in Court with the same care as if he were already himself upon the Bench. 'Only with a judge of the highest order of judicial intellect would such a process be possible,' as Sir Theodore Martin justly observes, 'for only such could escape the hazard of losing in the advocate the functions of the judge.'[2] But when Lord Westbury, towards the close of his long life, was once asked at Jowett's table whose was the finest judicial intellect he had ever known, he replied, 'Lord Lyndhurst's.'[3]

higher judicial office than that of Master in Chancery, and whose recovery of the ancient Courtenay peerage was attributable mainly to the zeal of Brougham.

[1] See the very interesting recollections of the late Rev. Whitwell Elwin, who heard him on his first circuit at Norwich (*Some Eighteenth Century Men of Letters*, i. 8).

[2] Martin, 282.

[3] The late Lord Grimthorpe was of the same opinion (*Cornhill Magazine*, July 1905, 25). It will come as a surprise to a generation

During the early months of 1831 the Chief Baron was but little in the House of Lords, and took part in its proceedings only when legal measures were under discussion. So amicable were his relations with the Government that at Lord Grey's request he undertook the charge of the Regency Bill. But as the eventual passage of the Reform Bill through the Lower House became more and more certain, the hopes of the Tory party began to turn to Lord Lyndhurst as the mainstay of resistance in the Peers. 'Gad, sir,' a country squire is reported to have said, after a heated debate in the Commons, 'if Phillpotts wasn't a Bishop and Copley was down here again, we'd beat 'em yet.' Or, as Zenobia puts it in 'Endymion,' 'So long as we have the Court, the Duke, and Lord Lyndhurst on our side, we can afford to laugh at the Waverers.'

On March 1 Lord John Russell introduced into the Commons his Bill for the amendment of the representation of the people. It proposed entirely to disfranchise sixty boroughs having a population of under 2,000 inhabitants;[1] to deprive of one member forty-seven others whose population fell short of 4,000;[2] to reduce the representation of Weymouth and Melcombe Regis from four members to two; and, in all the boroughs whose privilege of returning members was preserved, to vest the right of election in the householders paying 10*l.* per annum rent, thus depriving the corporations and freemen of their lucrative monopoly. In the counties the franchise was extended to copyholders and to leaseholders for terms of twenty-one years and upwards. Out of the vacancies thus created forty-two members were given to the English towns, including eight to the metropolis, and fifty-five to the counties; Scotland was to receive five additional members, Ireland three, Wales one; and sixty-two seats were left unfilled, bringing

that has grown up since Doctors' Commons was abolished that the man whom Westbury put second to Lyndhurst was Dr. Lushington.

[1] Schedule A. [2] Schedule B.

down the total membership of the House of Commons from 658 to 596.

Moderate as these proposals seem in the light of the Reform Bills of 1867 and 1884, they went far beyond public expectation, and far beyond the scheme which Brougham is said to have drafted in the preceding autumn.[1] The secret had been well kept until the very night; and as Lord John gradually unfolded the Government plan it was greeted with shouts of derision. Croker always maintained that if the Tories had cut short the preliminary debate and divided there and then against the principle, they would have carried the rejection of the Bill by a considerable majority.[2] Other counsels, however, prevailed, and on March 21 it passed the second reading by 302 votes to 301.[3]

The tellers scarcely got through the crowd, wrote Macaulay to Ellis, for the House was thronged up to the table, and all the floor was fluctuating with heads like the pit of a theatre. But you might have heard a pin drop as Duncannon read the numbers. And the jaw of Peel fell, and the face of Twiss was as the face of a damned soul, and Herries looked like Judas taking his necktie off for the last operation.[4]

But the Bill itself was doomed; it abounded with anomalies which were trenchantly exposed by Peel and Croker and Wetherell, and on April 19 General Gascoyne carried by eight votes an amendment against any diminution in the existing number of representatives. This really gave the Government more than they had asked for, by placing sixty-two more seats at their disposal to go among the larger towns; but the Opposition were clearly masters of the situation. And on the 22nd the King was induced to dissolve Parliament During the heated scene

[1] Vide *infra*, 288. [2] Croker, ii. 110.

[3] The majority would have been the other way but for the defection at the last moment of the Right Hon. John Calcraft, who had been Paymaster of the Forces in the Wellington Administration. He committed suicide a few months afterwards (Molesworth, *History of England*, 1830–74, i. 110).

[4] *Life of Lord Macaulay*, i. 203.

which preceded his Majesty's entry from the Throne Room, Lord Lyndhurst was forced into an angry altercation with the Duke of Richmond, who, seeing 'a junior baron' engaged in conversation with the Duke of Wellington, demanded that the standing order should be read which required their lordships to be seated 'in their proper places,' according to their rank and precedence.[1]

The appeal to the country resulted in the utter rout of the Tories and the destruction of any remaining hope of staying the Reform movement; in those days 'whenever England was excited, which was rare, she spoke through her freeholders,'[2] and hardly a single Tory, save Lord Chandos, was returned for a county constituency. The opposition came back a weak and broken minority, and the storm of passion and mob violence which had accompanied the elections must have convinced them of the forces which the Ministry had behind them.[3] The Bill, which was at once reintroduced, embodied the Gascoyne amendment, and thus largely reinforced the borough representatives; the second reading was carried on July 7 by a majority of 136, 367 to 231. After a prolonged and obstinate struggle in Committee it passed the third reading on September 22, and on the evening of the same day it was carried up to the House of Lords, and the second reading was fixed for October 3.

Much advice, friendly and unfriendly, had been tendered to the 'rotten-headed and malignant Lords,' but of their intention and of their ability to throw out the Bill there could have been no real doubt. The debate, which lasted for five nights, was 'by all accounts a magnificent display, and incomparably superior to

[1] Hansard, 3rd ser. iii. 1806; Greville, ii. 139.

[2] Lord Beaconsfield, *Endymion*.

[3] Lord Kingsdown (*Reminiscences*, 80) relates how his uncle, Sir Robert Leigh, showed him his will which he had executed before going to the Wigan election in June 1831, 'when I believe he fully expected to be murdered, and where the event all but justified his apprehension.' His Lordship, then Mr. Pemberton, had himself a scarcely more favourable experience at Rye (*ibid.* 85).

that in the Commons. Lord Harrowby's speech was amazingly fine, and delivered with great effect, and the last night the Chancellor is said to have surpassed himself, Lyndhurst to have been nearly as good.' 'But,' Greville added a little later, 'Henry de Ros, who is a very good judge, writes me word that Lyndhurst's speech was most to his taste.'[1]

On the first introduction of the Bill Lord Lyndhurst had maintained, in a private letter to Brougham, that its tendency was to destroy the sovereignty and the constitution. It went utterly beyond anything he had ever contemplated, utterly beyond the limits which the advocates of Parliamentary Reform had ever ventured to approach. And when he rose,[2] late on the last night and 'sinking with fatigue,' to reply to Brougham, his speech was a root-and-branch condemnation of the Bill and a glowing panegyric on the existing constitution; but he struck one false note. By taunting the Ministry with inconsistency, he laid himself open to a heavy rejoinder on Catholic Emancipation. Lord Grey seized on it, and proceeded to tax him with a change of front on Parliamentary Reform also. Lyndhurst interposed a flat contradiction. Lord Grey still persisted.

My Lords, I did understand that the noble and learned Lord at one period of his life entertained opinions favourable to the consideration of the question of Parliamentary Reform.[3]

'Never,' was the emphatic rejoinder.

[1] Greville, ii. 202. Gladstone, on the other hand, curiously enough put it below Lord Wynford's. Roebuck was struck by the 'cold sagacity' which shone steadily throughout the whole discourse; 'we feel no enthusiasm, we are not touched by any appeal to a generous sentiment, we never appear to ourselves exalted by being called upon to share in and sympathise with any large and liberal policy.' But he praises it for 'exquisite accuracy, simplicity, and constantly equal and sustained force. . . . There was nothing superfluous, all was serenely great' (*History of the Whig Administration*, ii. 214).

[2] Hansard, 3rd ser. viii. 340.

[3] The reference was, of course, to the alleged 'Liberalism' of his youth. A few nights later (Hansard, xii. 442) Lyndhurst declined to deny that, in common with all his former colleagues save the Duke of

The Bill was thrown out by a majority of forty-one, a result to which the firm and eloquent appeal of Lord Lyndhurst was held to have largely contributed. The Ministerial leaders were for the moment disappointed and downcast at a division so much worse than they had anticipated, and had there been any reality in the fondly propagated rumours of Tory reaction, now was the opportunity. But the reactionists did not move, and the democracy throughout the kingdom spoke with no uncertain voice. The morning after the rejection of the Bill the London newspapers were published with black edges, and there was a fierce outburst of rioting, incendiarism, and assaults upon unpopular Peers. Bristol, mainly in consequence of the folly of Sir Charles Wetherell and the vacillation of an unfortunate cavalry officer, was sacked by the mob. Nottingham Castle was burnt to the ground in broad day, and Colewick Hall, the residence of Mr. John Musters,[1] was plundered and left in flames. The Government issued a proclamation declaring the political unions to be unconstitutional and illegal, but they did not display any extraordinary zeal in repressing the disturbances. An ugly temper began to display itself among some of the prominent Radicals, and Roebuck used to say in his old age that he was lawyer enough to know that in the Reform Bill times he had done things for which he might have been hanged. Even Lord Grey was guilty of using highly injudicious language. During the course of the debate he had warned the bishops to 'set their house in order,' forgetful apparently

Wellington, he had admitted that some measure of Parliamentary Reform was absolutely necessary to enable the government of the country to be carried on. It was during the incident described in the text that Denman, who could never forget the Circuit indiscretions of 'Jacobin Copley,' is variously reported as having shaken his fist from below the Bar and exclaimed to Campbell, 'Villain, lying villain,' and as having whispered to Sir Denis Le Marchant, 'Villain—no, he was a democrat.' The latter version seems the more probable on many grounds. See Le Marchant's *Life of Lord Spencer*, 350.

[1] His wife, the Mary Chaworth of Byron's boyhood, died a few weeks afterwards from the shock and fright (Croker, ii. 134).

of the context 'for thou shalt die and not live.' The crowd both in London and the provinces seized on the catchword, and their lordships from the mild and gentle Howley downwards were exposed to a campaign of brutality and insult, without a parallel since the days of the Long Parliament. It is difficult not to sympathise with Henry of Exeter on the occasion in the House of Lords when he denounced the Premier in language to which that dignified nobleman had been a stranger since the decease of Lord Chief Justice Ellenborough. Unfortunately Bishop Phillpotts made the usual blunder of men in a passion. He hit out wildly, and received a trouncing in return.

During these stormy days the Ministers refused to contemplate resignation, and on December 12 Lord John Russell introduced a third version of the Reform Bill, now finally modified from the original draft of March by the retention of the existing number of members, by the admission of the tenant farmers to the suffrage, and by a revision of the disfranchisement schedules, based on the principle of rating capacity instead of population. The working out of this latter scheme resulted in a good many anomalies which, according to the opponents of the Bill, generally 'happened to be' favourable to the Whigs.

On April 13, 1832, it reached the Lords, and, though the hostility of the Peers was unabated, influences had been at work which promised to ease its passage. Lyndhurst again spoke strongly against the second reading; he alluded in vehement terms to the pressure which was being put upon the Prime Minister to induce him to pack the House with new Peers; and he exhorted his friends and allies to stand firm and act with courage regardless of threats of insurrection and disturbance.[1] In spite of his efforts, and thanks to the exertions of Lords Harrowby and Wharncliffe, and of a small band of 'Waverers,' as they were termed, the second reading was carried by a majority of nine. But the Government could not rely

[1] Hansard, xiii. 428.

on so precarious a support. It was clearly within the power of the Opposition to delay, to alter, and to mutilate the Bill; and Ministers could only wait for some amendment which would strike or could be represented as striking at the principle of the measure, and then call upon the King to fulfil his promise of creating peers.

Their patience had only a short trial. On May 7, upon going into Committee, Lord Lyndhurst moved, in what Greville calls a very aggravating speech, that the disfranchising clauses should be postponed until the enfranchising clauses had been considered.[1] A measure of Parliamentary Reform, he very plausibly contended, ought to be primarily a Bill of enfranchisement, and disfranchisement ought only to be a consequence. They must know the extent of the enfranchisement before they could proceed with propriety to consider the extent of the disfranchisement. In vain Lord Holland implored the House to recollect that these latter clauses were intended to purify the representation of the Commons, and 'to rid it of the filth and ordure under which it had so long been suffering.' In vain Lord Grey declared that, if the motion were successful, it would be fatal to the Bill. Lyndhurst had recaptured the Waverers, and the clauses were ordered to be postponed by 151 votes to 116. The Prime Minister at once moved that the House should 'resume from Committee,' and the further consideration of the Bill was postponed to the 10th.

The leaders of the Opposition, including Lyndhurst himself, seem to have been taken aback by Lord Grey's firmness, and they were so obviously unprepared that it has been conjectured that they thought the amendment might have been accepted. It is difficult to see how they could have entertained any such delusion. The aim and object of the Government was the abolition of the nomination system on its own demerits. It is perfectly true that the principle contained in the amendment would have redressed the worst anomalies while

[1] Hansard, xiii. 677.

retaining some of the more useful features of the old régime. And had it been adopted by a Tory Government during their long and undisputed tenure of power, it might have changed the current of modern English history. But the opportunity was gone for ever, and 'the Bill, the whole Bill, and nothing but the Bill,' was the issue now before the country.

The King, however, remained to be reckoned with, and after some hesitation he declined to assent to the creation of 'an adequate but indefinite number' of Peers;[1] whereupon his Ministers resigned in a body. On the same day, May 9, as Lyndhurst was sitting in the Court of Exchequer, a letter from Sir Herbert Taylor was delivered to him, and the rumour spread through Westminster Hall that the Chief Baron had been 'sent for.' In what capacity the ex-Chancellor was summoned by his sovereign is not quite certain. Lyndhurst himself[2] declared that, from holding a judicial situation, he might be expected to give his sovereign impartial advice; but the judicial character was sitting somewhat lightly just then on the man who was the virtual leader of the Opposition in the House of Lords. As the result of the interview he was authorised by the King to make overtures to any person whom he might think likely to undertake the Government with success. 'The bold Chief Baron advised his Majesty to consult the Duke of Wellington, and was himself the bearer of the King's message to Apsley House,'[3] where, the next morning, May 10, the Duke, Peel, Croker, and Lyndhurst himself met in conclave to discuss the situation. After the last-named had explained what had passed between him and the King, and the extent of his mission, Croker asked him, 'Whom do you mean to put at the head?'

He made a significant motion with his hand towards Peel and said, '*That* Peel must answer.' Peel then said, with a

[1] See Croker, ii. 153 *et seq.*; on the whole the best authority for the events of the 'days of May.'

[2] Hansard, xiii. 999.

[3] *Endymion.*

tone of concentrated resolution, that he could not and would not have anything to do with the settlement of the Reform Question, and that it was evident that it must be settled now, and on the basis of the present Bill.[1] Lord Lyndhurst said that the King had not fixed that the new Government was to be formed on the specific engagements to carry *Schedules A or B*, but that his Majesty, having thrown out something to *that effect*, Lord Lyndhurst had objected that none of the Tories could consent to swallow these schedules in the lump, upon which his Majesty had varied his phrase and said, 'Well, then, an *extensive* reform;' and that 'an extensive reform' was therefore the basis of his lordship's mission. Peel replied that it was all the same in his view, and he would never submit to the same painful abandonment of opinion on the Reform Question as he had undergone on the Catholic claims; and he talked of the 'advantage to the country that public men should maintain a character for consistency and disinterestedness which he would for ever forfeit if, a second time, he were on any pretence to act over again anything like his part in the Catholic question.'[2]

It was agreed that Lord Harrowby, who was mainly responsible for the second reading of the Bill in the House of Lords but had now fallen back into line, was the proper person to come forward and cure the mischief he had wrought. Harrowby refused, as Lyndhurst had foretold that he would, and the latter applied at once to the Duke, who wrote (10.30 P.M.) that they would at any rate make an effort to deliver the King from his 'tyrannical Minister.' He was as much averse as ever, he added, to the Reform Bill, but no embarrassment of that kind should be allowed to stand in his way. The next morning, before proceeding to the Palace, whither he had been formally summoned, the Duke saw Croker and told him that, failing anyone else, he was prepared to undertake the Government. 'He had passed his whole life in trouble, but it was his duty to stand by the King, and he would do so.'

[1] Croker, ii. 155.

[2] Νήπιος, οὐδὲ τὰ ἤδη ἃ ῥα Ζεὺς μήδετο ἔργα (*Iliad*, ii. 38).

A last effort was made to move Peel, but he stood firm, and then Manners Sutton, the Speaker, with whom Lyndhurst had been in communication, was ushered into the royal presence. He had been originally designated as Premier, but he was now formally offered the leadership of the House of Commons under the Duke of Wellington, who set to work at once to form an administration. Lyndhurst's place in it was assured, but the recruiting broke down utterly. Sir John Hardinge and Sir George Murray agreed out of loyalty to support their old chief, and Mr. Alexander Baring and the Speaker were reluctantly enlisted. But the bulk of the party in the Commons stood aloof with Peel: men of the school of Sir Robert Inglis would not hear of a Tory ministry pledged to 'comprehensive reform.' After two nights of such tumult and excitement as never had been witnessed within the walls of St. Stephen's, Baring declared he would sooner face a thousand devils than the House of Commons, and finally, on May 14, made a speech in which he intimated a desire for the return to office of Lord Grey and his colleagues. This admission was regarded as fatal. After the debate a conclave was held at Apsley House when the Duke met Croker, Hardinge, Peel, and Manners Sutton. Lyndhurst was not present; the night before he had been treated to a three-hours' harangue from Sutton in the Duke's study, and on returning home had protested that he could not endure to have anything to do 'with such a damned tiresome old ——'[1]

It was at last agreed, on Peel's proposition, that after what had passed in the House, and the temper shown, it was impossible to hope to form a Tory administration on the basis of passing the Reform Bill, and that therefore his Majesty must take his own course.[2] But to save the King's personal honour as to the creation of peers, the Duke declared that he would abstain from offering any further opposition to the Bill. The next morning, at nine o'clock, he called on Lyndhurst to

[1] Greville, ii. 299. [2] Croker, ii. 107.

inform him of his decision. For the moment the Chief Baron acquiesced, but when his visitor had departed he determined as a last effort to induce the Duke to convene a party meeting. 'I will go after him and detain him,' he said to his wife, who rejoined that he had better start at once or the Duke would be gone. 'Plenty of time,' said Lyndhurst; 'he must go home first, and he has to breakfast.' But when Lyndhurst arrived at Apsley House the old campaigner was gone. Following him to St. James's Palace, he found that he had just been admitted to audience with the King, and that the fate of the ministry was sealed.[1]

So ended the last struggle against the Revolution of 1832, for revolution it was, call it as we may. Lyndhurst was for fighting it out to the last, but he can have had small hope after Peel and Croker and Goulburn had refused all active co-operation. It will always be an interesting speculation what would have happened if the Tory leaders in the Commons had rallied round the Duke and the Chief Baron, and enabled an administration to be formed on the basis of carrying an amended Reform Bill. Brougham, writing, in extreme old age, and with feelings still embittered against his former colleagues, maintained that a great opportunity had been lost by Peel's refusal.

The rally of the Tory party all over the country would have been most zealous and powerful; the demand of eighty peerages certainly would, after a little reflection, have been a fair ground of attack upon us; there would have been no small number of men in the House of Commons disposed from various motives to form a strong Government, and, above all, as time was no object, so firm a chief as the Duke keeping the peace everywhere unbroken, by degrees the Reform fever, as it was called, would have been allayed, the more respectable of even our stoutest supporters giving no encouragement to violent courses.[2]

[1] Sir H. Maxwell, *Life of Duke of Wellington*, ii. 269, from the Salisbury MSS.

[2] *Life of Lord Brougham*, iii. 196.

One cannot believe that these were the sentiments of Lord Brougham and Vaux in 1832. It is true that the old system and the nomination boroughs were still in existence, that the Crown was powerful, that the Duke of Wellington was only sixty-three. But the means at his disposal were miserably inadequate, and it rested with O'Connell to raise a fiercer storm in Ireland than that before which the Duke had bent in 1829. The only circumstance which could have justified him would have been a definite reaction in the country, and of this the shrewdest judges, from Peel to Disraeli, saw no sign. The outbreak of articulate fury in the Commons was less ominous than the quiet businesslike preparations out of doors; and, making all allowance for mob oratory, the nation was on the brink of insurrection. The Duke might have triumphed in the long run, but at what a cost! Be it remembered, however, that the motives of the Tory Peers, of Lord Lyndhurst and those that acted with him in the desperate endeavour, was not the preservation of the rotten boroughs, but the maintenance of the existing constitution, the rescue of the House of Commons from mob coercion, and the emancipation of the sovereign from what the Duke chose to call the trammels of a tyrannical Ministry. A very capable observer considers that by his conduct at this crisis Lyndhurst did much to cover and retrieve the defeat of his party.[1] He inspired the Tories with that unconquerable spirit and restored unanimity which were to bring them back to power, and he taught them that confidence in himself which made him one of their most powerful chiefs.

On May 17 the King recalled his former advisers, with the necessary assurance that peers should be created in sufficient numbers to secure the passage of the Bill, while at the same time his influence was brought to bear on the irreconcilables to make such an abuse of the prerogative unnecessary. The amendment of the 7th was

[1] *Edinburgh Review*, cxxix. 569.

treated as nugatory, and the House resumed, or rather commenced, the consideration in Committee of the clauses of the Bill. Before this was done, however, Lord Lyndhurst made a statement explaining the recent negotiations, in which Greville describes him as being 'exceedingly able, highly excited, very eloquent and contriving to make the case a good one.' [1]

Small wonder that he was excited, for few men have been bespattered with such virulent abuse as was poured upon him in the House of Commons, in the Press and at public meetings. Tom Duncombe was by no means the worst offender when he stigmatised Lord Lyndhurst's whole life as 'one continuous scene of political prostitution and apostasy,' and Sir Francis Burdett, who had been a frequent guest at his house, fiercely assailed him by name in the House of Commons. Lyndhurst spoke with bitter contempt of the assaults in the Press by which he had been daily traduced, maligned, calumniated. 'They may wound me,' he said, 'and wound me deeply too, through connections which are dear to me; but, as far as I am myself concerned, I treat them with ineffable scorn.' And alluding to the flood of insult which had been heaped upon the sovereign and his consort, he declared that he should be ashamed to be a minister of the Crown for one hour and suffer the 'Times' newspaper to go unprosecuted.[2] With regard to the charge of political ambition and the desire for personal aggrandisement his answer was brief and dignified:

I wish to have no motives imputed to me; I impute none to other men. I will only say that I never aspired to such a position as that of leader of a party; it is alike foreign to my inclination and my habits. Since the accession to office of the noble Earl (Grey) I have seldom attended the House; I have taken no part in its proceedings. I never

[1] Greville, ii. 303.

[2] Hansard, xiii. 1002. The same papers which had gone wild over the sorrows of Caroline of Brunswick could now only speak of Queen Adelaide as 'a nasty German frow' (Molesworth, i. 221).

engaged in political discussions. At last, when the Reform Bill was introduced I did come forward. If I thought that the tendency of this measure was to destroy the monarchy and the Constitution, was it not my duty as a Judge of the land, as a Privy Councillor, as a member of your Lordships' House, with all my power to oppose it? If this measure had originated with, and was supported by, my earliest and most valued friends—by the very friends of my bosom—I would have acted in the same way.

The Bill finally passed the Lords on June 4. Lord Lyndhurst was not among the twenty-two peers who recorded their votes against it, nor did he take any part in the debate. In his own words, the barriers were broken down, the waters were out—'Who can predict their course or tell the devastation they will occasion?'

CHAPTER V

LORD LYNDHURST IN OPPOSITION—HIS SECOND CHANCELLORSHIP

1833–1835

THE Whig administration carried everything before it at the polls, and when the first Reformed Parliament was opened by commission on January 29, 1833, only 178 declared 'Conservatives' took their seats on the Speaker's left. The majority, indeed, bore within it the germs of malignant decay, which were not long in making themselves felt, but for the moment the reforming ardour was unabated. The all-pervading energy of Brougham was felt at every turn, and, Chancery Reform by Act of Parliament being in abeyance, he reverted with all the more ardour to the administration of the Common Law.

Here, almost as much as in Chancery, sweeping alterations were necessary if the administration of justice was to be made pure, prompt and cheap. Here, again, the nation was suffering from having outgrown its judicial machinery. Except for the fact that upon the abolition of the Welsh judicial establishment in 1830 each of the three Courts had been given an additional judge, the strength of the Bench on the accession of William IV. was the same as it had been on the demise of Richard I. The old 'county courts' of the sheriff still existed in name, but their jurisdiction had never risen above the original forty shillings: in the Counties Palatine cases of rather greater magnitude were dealt with; and there were a certain number of local 'Courts of Request' created by statute. Altogether something

like 280 local tribunals of one sort or another were in existence, but in practice their task consisted in the enforcement 'of petty debts by means of a dilatory, costly and inefficient procedure.' [1]

During the five years ending in 1827 no fewer than 30,000 out of the 90,000 causes entered annually at Westminster were for sums not exceeding 20*l.*; the lists at assizes were swollen with cases which to-day would not go beyond the county court registrar; the cost of recovering sums under 50*l.* was often ludicrously out of proportion to the amount at issue. Many banks and commercial houses systematically submitted to loss and robbery rather than prosecute their claim in a court of law, and large classes of the community were forced to submit to a general denial of justice.

A tentative step towards the cheap and easy recovery of small debts had been made by Lord Althorp, who introduced in 1823 a Bill extending the jurisdiction of the existing county court to 10*l.* and giving the sheriff a legal assessor.[2] But neither his Lordship nor Sir Robert Peel, into whose hands he resigned it, had been able to make any headway with this modest measure, when in 1828 Brougham made his great speech on the administration of the law, which Lord Lyndhurst followed up by the appointment of a commission to enquire into the pleadings, practice, and procedure of the Courts of Common Law.

Without waiting for the report of the learned Common Law Commissioners, or, possibly, harbouring misgivings as to the mode in which they would deal with the subject, Brougham introduced in 1830 a Bill for the establishment of 'Local District Courts' with a jurisdiction limited to 100*l.* in actions of debt, 50*l.* in actions for injury to person or personal property, and an unlimited jurisdiction in actions of every kind where the parties agreed to a trial before the

[1] *The Evolution of the County Court*, by His Honour Judge Sir Thomas Snagge; a most concise and informing essay.

[2] Le Marchant's *Life of Earl Spencer*, 188.

local tribunal. The district judges were also to act as arbitrators, on occasion, and it was further proposed to entrust to them duties analogous to those of a *juge de paix* under the title of Judges of Reconcilement. The Bill, introduced in April 1830, was read a second time in the House of Commons, and seemed likely to receive the approval and support of Sir Robert Peel and Lord Althorp; but owing to the prorogation and dissolution of that year, it perished in its prime. In the autumn, however, Brougham became Lord Chancellor, and one of his first acts was to introduce the measure in the House of Lords, omitting the arbitration and reconcilement clauses, but adding a large bankruptcy jurisdiction and entrusting to the local judges the functions of Masters in Chancery. At the instance of Lord Lyndhurst the Bill was referred to the Common Law Commissioners, who advised a reduction in the amount of the jurisdiction to 20*l.* in actions of debt and 50*l.* in tort, but otherwise recommended its adoption.[1]

In this form, but with the additional proviso that the measure should be experimental and be limited at first to three or four unspecified districts, it was introduced by Brougham into the House of Lords on March 28, 1833, under the title of the Local Judicature Bill. Lyndhurst gave him immediate notice of his intention to oppose it. To the end of his life he was a remorseless critic of experimental law-making. 'Nothing,' he declared, 'was more easy than to throw out a general idea of legislation, nothing more difficult than to carry into effect a plan which should remedy defects existing in the laws without creating greater defects than those which the plan was intended to rectify.'[2]

The Bill immediately in question was clumsily drawn, the details were bad, and much of it was unintelligible owing to the schedules not being filled in or printed.[3] But Lyndhurst's dislike for it was not grounded merely on the inartistic draftsmanship. The whole principle of

[1] Snagge, 9.

[2] Hansard, xviii. 884.

[3] For a summary of the objections to the Bill, see an article in the *Law Magazine*, ix. 392.

local courts was, at that period of his career, distrusted and dreaded by him, and in this he only gave expression to the great volume of professional opinion. For the leaders and leading juniors of the Common Law Bar, as well as for the London attorneys who acted as agency firms, the existing system 'was a lucrative monopoly, and it could not be expected that they would regard proposals for scattering the business save with feelings of abhorrence, or that, being so near to the legislative centre, they would forbear to encourage resistance to all proposals for reform.' [1] And so strong was the feeling that a few days after Brougham's introductory speech a deputation from the chief London agency firms had waited upon the Chief Baron and requested him to undertake the opposition to the Bill.

The Bill was read a second time without a division, Lyndhurst expressly reserving himself for committee; but when that stage was reached he had omitted to master his brief.

> He had lounged down to the House of Lords with a handsome woman on his arm, looking more like a colonel of cavalry than a Chief Baron, and in so unprepared a state that he was obliged to get the passages he had to read marked for him.[2]

Even so it was a remarkably effective speech. He began [3] by reminding their lordships that cheap law did not always mean cheap justice, nor expeditious law expeditious justice. He admitted the inconvenience and hardships of the present system, but unfortunately they were almost inseparable from any system that could be devised. It was agreed on all hands that the administration of justice in this country was more pure than that of any other country in the world. It was not only uncorrupted and incorruptible, but it was above suspicion.

[1] Snagge, 8. [2] *Quarterly Review*, cxxvi. 27.
[3] Hansard, xviii. 870.

To what is this to be ascribed? To the central system by which the law is administered in England. Twelve or fifteen judges, educated in the same manner, sitting together at one time and in one place, consulting each other daily and, if need be, hourly, subject to the criticism of their compeers, subject also to the competition of an acute and vigilant Bar, kept constantly alive to the justice of the decision of the judges and their own credit—ensure for the suitors a certainty, a precision, a purity, and even a freedom from the suspicion of corruption, such as no other country in the world would ever boast of.

To no set of men did the liberty of England owe more than it did to the members of the English Bar. They had been, on the one hand, the safest guardians of the people against the assaults of arbitrary power, and he had no doubt that they would prove themselves, on the other, the strongest barriers of the throne against democracy and republican usurpation. This Bill was, in his opinion, destructive of the independence of the English Bar. As soon as the Provincial Courts were established, which were to take away from Westminster Hall two-thirds of the business now transacted in it, they would have an immense body of provincial barristers. Many of the barristers now practising in Westminster Hall must necessarily abandon their town practice and convert themselves into provincial barristers. Need he tell their Lordships that such barristers would be inferior in learning, would be inferior in talent, would be inferior in intelligence, would be inferior in all those great and glorious qualifications which had so long distinguished the Bar of England? The Bill would take two-thirds of the ordinary business from the Assizes, where young men recently called to the Bar went to learn experience, and to form themselves to the practice of the Courts, and to succeed to those vacancies in their profession which the death of some and the elevation of other members of it were daily opening to their hopes and their ambitions. The business done at the Assizes would be so small in consequence that young men would cease to go the circuits, and the little business that was left would be absorbed and monopolised by the provincial counsel.

The Bill went through committee, not without stormy passages, and on July 9 the third reading was

moved. Conscious, perhaps, that he had not done himself justice on the former occasion, Lyndhurst bent himself for a supreme effort. While reiterating his former objection to the whole system of local judges, he complained that not a single one of his suggestions for amendment had been accepted; and he now developed an attack upon that feature which lay at the root of the opposition to the Bill, the enormous amount of patronage which it conferred upon the Chancellor.

I am well aware, he said, that personally my noble and learned friend on the Woolsack has no wish for this unlimited power; my noble and learned friend does not desire this vast patronage, and while exercised by him it would be safe; but the Great Seal may be transferred to another who may be ambitious and desirous of gratifying puffing and sycophantish dependents. My noble and learned friend has candidly told us that he had looked about to see where this formidable patronage could be lodged with less peril, and that, not being successful in his search elsewhere, he had been compelled as a *dernier ressort* to retain it for himself. I am ready and willing to give my noble and learned friend credit for the most patriotic views and the most disinterested intentions, but we must not legislate for individuals, we must contemplate the possibility of a Chancellor with the commanding eloquence and transcendent abilities of my noble and learned friend, yet not possessed of his moderation and disinterestedness—on the contrary, anxious to devote the whole of his energies to the purposes of personal aggrandisement, and indisposed to those institutions which may appear to him calculated to check him in his career. Such a person, conscious of the fleeting nature of popular applause, might wish to establish his power on some more substantial foundation, and might find it convenient to surround himself with a band of gladiators arranged as judges, ready to obey his commands and to deal destruction among his adversaries.[1]

The sarcasm, refined and polished to the last degree, shone out in every sentence, and there was not a point

[1] Hansard, xix. 313.

but went home. Yet the pervading spirit of this most characteristic speech was not bitterness; it was rather the French *malice*, the love of tormenting. While Plunkett and Wynford were continuing the debate, Lyndhurst had sat in the dining-room of the House of Lords, 'not a bit tired, elated and chuckling.'

'Well, how long will the Chancellor speak, do you think, eh? We shall have some good fun from him. What lies he will tell, and how he will misrepresent everything! Come, let's have done our tea that we mayn't miss it, eh!'[1]

Brougham's speech was worthy of the occasion, 'imaginative, impassioned, and dexterous,' though marred by an altercation into which he succeeded in goading Lord Wynford. There had been a strenuous whip, considering the non-political nature of the question, and when the division was called the votes of the Peers present were exactly even, 80 'content' and 80 'non-content;' the proxies, of which Lyndhurst held 53, Brougham only 41, gave the non-contents a majority of twelve, and the Bill was lost. It was everywhere admitted to have been Lyndhurst's work, and we could wish that his great resources had been exerted in a better cause. The Bill was ill-drawn and in part ill-conceived, but it was quite susceptible of being knocked into shape, could the distinguished lawyers have abandoned their rivalry. The people of England and Wales had to pay for thirteen years longer the cost of this oratorical duel. There is no doubt of Lyndhurst's sincerity in his opposition to the creation of local courts; but long before the end of his life he had become a convert, and the Act of 1846 'for the more easy recovery of small debts and demands in England,' the foundation of our modern county court jurisdiction, received his *imprimatur* during his last Chancellorship. By a piece of retributive irony he did not remain in office to exercise the patronage created by it.

It should be added in his justification that he saw

[1] Greville, iii. 7.

more clearly than any of his contemporaries the effect of the new system upon the Bar from which he came and to which he owed a duty that he never shrank from discharging. The county courts, it is true, have not 'degraded' nor 'ultimately destroyed'[1] the Bar, and Lyndhurst was strangely mistaken in his prophecy that 'no man of education or respectability would transact business' in them as an attorney. But he did foretell the break-up of the Circuit system and the calling into existence of those local Bars which, in spite of the ability and integrity that characterise the majority of their members, have not, and never can, replace that old united corporate Bar of England which was the pride of Copley and his compeers.

Christmas was passed as usual by Lyndhurst at Paris, where his wife and daughter had been spending the autumn, and where the party was completed by the presence of the Bostonian son and daughter of his elder sister, Mrs. Greene. Lady Lyndhurst was a prominent member of the gay and distinguished society which collected round Lord and Lady Granville at the British Embassy, and there are constant allusions to her in the latter's Paris correspondence during that winter.[2] On January 15, 1834, when the Chief Baron was back in London presiding over his Court, she died after a few days' illness. The event sent a shock of horror throughout the English colony. Only the previous week she had been conspicuous at an Embassy ball, radiant and covered with diamonds. Lord Lyndhurst received the news while on the Bench, and immediately started for Paris to bring home the body and to help to comfort

[1] Hansard, xix. 320, 322.

[2] E.g. in a letter to the Duke of Devonshire: 'Dolly arrived, looking sulky, ill, and affronted, not with any one in particular, but with public opinion and private feeling, to both of which, I suppose, she secretly does justice as applied to her own case. Le Préfet de la Seine is very attentive, and Lady Sandwich and she are inseparable; a homage to Toryism I conclude. But this does not seem to unruffle Dolly's plumes, and if she could make a noise like a Turkey cock, she would' (*Letters of Lady Granville*, ii. 143).

their daughter, who refused to leave the house until his arrival. Lady Lyndhurst had been, in the fullest sense, a helpmeet to her husband ; no small part of his political and social success was due to her, and his warm and affectionate disposition felt the bereavement most keenly.[1]

During the following session he played no part in the House of Lords, save to pilot through the Thellusson Act,[2] and he found ample occupation and some relief from private sorrow in the discharge of his judicial duties. Things were going badly for the Whigs in spite of their huge and unbroken majority.[3] Early in the year Stanley, Sir James Graham, and the Earl of Ripon had withdrawn from the ministry as a protest against the secularisation of the Irish Church funds. On July 9 Earl Grey tendered his resignation, able no longer to endure the intrigues and dissensions of his colleagues. Lord Melbourne took his place and weathered the session, but on the morning of November 15 London was electrified to read in the 'Times' that his Government was at an end.

William IV. had never forgotten the triumphant return of the Grey Cabinet and his own humiliation in May 1832. The death of Earl Spencer, and the consequent removal of Lord Althorp from the Commons to the Lords, gave him his opportunity. Lord Melbourne, both in writing and in an interview with his Majesty,

[1] See in particular the recently published *Letters to 'Ivy'* from the 1st Earl Dudley, 366. When in doubt as to accepting the office of Chief Baron, Lord Lyndhurst 'consulted his usual adviser. She was at Brighton, but came instantly to town, and decided with her usual promptitude and good sense in important matters.'

[2] Hansard, xix. 1045. This measure, 3 & 4 Wm. IV. c. 27 (private), by which the colossal folly of Peter Thellusson's will was as far as possible remedied, must not be confounded with 39 & 40 Geo. III. c. 98, by which such perpetuities as the testator had created were rendered illegal in the future.

[3] 'There is nothing more remarkable in political history than the sudden break up of the Whig party after their successful revolution of 1832. It is one of the most striking instances on record of all the elements of political power being useless without a commanding political will' (*Endymion*).

had painted in such gloomy colours the difficulties of reconstituting the Ministry and carrying on the Government that the King informed him that in the circumstances he proposed to dispense with his present advisers and try a complete change.[1] Melbourne returned from Brighton to London, carrying with him a letter for the Duke of Wellington, who made his way from Strathfieldsaye to the Pavilion and there advised his Majesty to name Sir Robert Peel as First Minister. Peel was in Italy and could not be got home without a delay of at least a fortnight, but the Duke undertook the business of all the state departments in the interim, paying a daily visit to the several offices. Lyndhurst, as a matter of course, became Chancellor and resumed his seat on November 21, to the no small satisfaction of the Equity Bar, whom Brougham's antics had driven to the confines of distraction. 'It was just four years,' said the King to the other members of the Council, 'that he had very unwillingly taken the Seal from Lord Lyndhurst, and he had now great pleasure in restoring it to him.' [2]

The political outlook was desperate enough, but the Chancellor was full of spirits and pugnacity. On the day of his appointment he assured Greville that they must dissolve Parliament as soon as Peel returned; their election agents in the country gave them most glowing reports of registration victories won before the revising barristers. But he confessed that the new administration would be confronted with a coalition of Whigs and Radicals, and he foresaw in Brougham the most troublesome of their opponents.

[1] The documents printed in the Melbourne papers (published in 1890), 219–221, 225, to which Sir Theodore Martin had access in manuscript, seem to have convinced Mr. Morley (*Life of Gladstone*, i. 118, *n.*) that the Premier had spontaneously given the King good reason for dismissing him, and it is apparent that he tendered a provisional resignation, little expecting to be taken at his word; for current contemporary gossip, see Croker, ii. 342, and Greville, 1st ser. iii. 162.

[2] Greville, iii. 156.

He will come down, night after night, and produce plans of reform upon any subject; he will make speeches two or three hours long to very thin houses which will be printed in all the newspapers, or published by himself and circulated; in fact, a series of pamphlets.

Both Greville and Lyndhurst concurred that the new Government, if it was to have a chance of being tolerated in the House of Commons or in the country, must have an active forward policy of its own; they cordially agreed that the Reform Bill and all the evils of the last four years were attributable to the High Tories who broke up the Duke's Administration; and that the consequences of that measure were a revolution in the country much greater than that of 1688.

Until Peel's arrival in England all was at a standstill, but Lyndhurst, at Greville's instigation, improved the shining hour by cultivating the Press in the shape of Mr. Barnes, the editor of the 'Times.' That influential organ, which had stirred Lyndhurst's indignation so deeply in 1832, had now completely broken with Brougham,[1] and within a fortnight of the change of ministry Mr. Barnes was being entertained at dinner in George Street by the new Chancellor, who had collected 'a miscellaneous party, droll enough, Mrs. Fox, Baron Bolland, Follett, Hardinge, &c. The Duke and Lord Chandos were to have been there.' Lyndhurst had shown less than his usual dexterity, and had advertised his intentions so freely that, in the language of the diarist,[2] the dinner made quite an uproar. None the less the connection proved highly advantageous to the Tories and secured an important recruit for Peel.

Meanwhile the party managers were busily at work among the constituencies, and one morning the Chancellor called upon Greville about getting 'young Disraeli'[3] into Parliament for Lynn through the influence of Lord George Bentinck, who was then seeking a colleague.

[1] Vide *infra*, 326. [2] Greville, iii. 169. [3] *Ib.* 170.

It was essential, apparently, that Disraeli's political principles should be kept in abeyance. 'If,' remarked Greville, 'he is wavering between Chandos and Durham, he must be a mighty impartial personage. I don't think such a man will do, though just such as Lyndhurst would be connected with.' Lord George Bentinck refused to hear of his future ally and biographer: judging from subsequent events,[1] he had probably small affection for Lyndhurst. A congenial candidate for Lynn was eventually found in the person of Mr. Stratford Canning, afterwards Lord Stratford de Redcliffe.

Disraeli's acquaintance with Lyndhurst dated from a meeting at Lady Blessington's in the previous July, and the strangely matched couple seem to have taken to one another instinctively. Lord Lyndhurst promised to sleep at Bradenham, the Buckinghamshire home of the elder Disraeli, the next time he went the Norfolk circuit; and a month or two later Disraeli dined with him *en famille*.

> A more amiable and agreeable family I never met. The eldest daughter, 'Sa,' is just like her mother, and, although only thirteen, rules everything and everybody—a most astounding little woman.[2]

In January of the following year he describes a more formal entertainment.

> Last Saturday a dinner by the Chancellor to Lord Abinger[3] and the Barons of the Exchequer. There were also George Dawson, myself, Praed, young Gladstone, Sir M. Shee, Sir J. Beresford and Pemberton.

The elements of a mighty interesting party, one would have thought, yet Disraeli found it 'rather dull; but we had a swan very white and tender, and stuffed with truffles, the best company there.'

There were closer affinities between the daring and subtle intellect of Lyndhurst and the adventurous genius

[1] Vide *infra*, 149. [2] *Letters of Lord Beaconsfield*, 88.
[3] Who had just succeeded him as Chief Baron.

of Disraeli than could have been suspected by Greville. They were at one in their dislike for the 'Venetian Oligarchy' of the Whig families, both had a strong strain of the modern spirit of imperialism, neither of them, to put it mildly, had very pedantic scruples in political warfare; and, one of them a Hebrew by descent, the other a North American colonial by birth, they both looked at English party traditions and conventions with a detachment that finds no parallel among their contemporaries. Lyndhurst felt by intuition the extraordinary qualities which lay hidden beneath the bizarre and dandified exterior of his young friend; had Peel been possessed of equal discernment the history of the Conservative party would have been very different.[1] In 1835 Disraeli dedicated to Lord Lyndhurst his 'Vindication of the British Constitution,' and his 'Venetia,' a couple of years later. And in the preface to his collected works, written seven years after Lyndhurst's death, he paid an eloquent tribute to his memory:

> The world has recognised the political courage, the versatile ability, and the masculine eloquence of Lord Lyndhurst; but his intimates only were acquainted with the tenderness of his disposition, the sweetness of his temper, and the playfulness of his bright and airy spirit.

Peel reached England on December 9, and the famous Tamworth manifesto was submitted to the Cabinet at a dinner in Lyndhurst's house.[2] Whether he was concerned in its composition is not apparent, but a *mot* of his was put in circulation to the effect that it read as though every sentence had been begun at Brooks's and ended at the Carlton. He was not dissatisfied with the contents, but he was sorely disappointed at the composition of the Cabinet and the retention of what Lord Randolph Churchill would have called the old gang.[3] It

[1] In 1841 Lord Lyndhurst vainly endeavoured to persuade Peel to make Disraeli Secretary to the Admiralty. The Earl of Derby, then Mr. Stanley, is believed to have been the fatal bar.

[2] Greville, iii. 173.

[3] Or possibly 'the Goats'; see *Life of Lord Randolph Churchill*, i. 148.

was a great mistake, he insisted to Greville, to 'bolster up the old concern,' and as it was irreparable it would probably be fatal.

He himself would have gone to work very differently; a small cabinet of eight or ten at most, leaving out Aberdeen, Goulburn, Herries, and the rest of that description, finding them employment abroad, if possible; if not, appealing to their patriotism.

The elections proved clearly that Conservative reaction had set in, but the pendulum had not swung far enough; the supporters of the Ministry only mustered 273 to 380 in the House of Commons, and it was apparent that the King had struck too soon. Yet in those days party labels were not so definite as they have since become; both sides claimed the victory, and Lyndhurst considered that he and his colleagues were safe: 'I have no fears: we are on a rock adamant.'[1] The first evening in Parliament was sufficient to undeceive him. The Government were defeated by ten in the election of a Speaker, and the closeness of the voting only emphasised the fact that the Irish and O'Connell had come to an understanding with the Whigs. In the Lords the debate on the Address gave Brougham an opportunity for a violent attack on the Ministry and a denunciation of all concerned in what he styled the unconstitutional dismissal of his Majesty's late advisers. Lyndhurst avowed full responsibility for what had been done, and declared that if he had himself been called upon to act in such circumstances, he should have acted precisely as the King had done.

When Lord Melbourne went to his Majesty, and said that the foundation on which his Cabinet had been formed had been taken away,[2] it was for his Majesty to say whether he should refer to other counsels or whether Lord Melbourne should endeavour to continue the Government.

[1] Greville, iii. 198.

[2] Cf. *Melbourne Papers*, 220, and *supra*, 109, *n.*

And in the recriminations which followed a taunt of Brougham's over his 'apostasy' on the Catholic question he gave the latter the lie direct in a manner more befitting the dispute between Marmion and Angus than the comity of the House of Lords. In the epistolary language of Disraeli, 'Lyndhurst *squabashed* Brougham on Tuesday.'

Peel's short administration was finally overthrown on April 8, and Lyndhurst once more descended from the Woolsack. But the position of the incomers was manifestly insecure, and it would have required a daring speculator to guarantee the Whigs the half-dozen years of office which they were destined to enjoy. When Sir John Campbell called on him to take the oath as Attorney-General he found the deposed Chancellor 'attired in a green silk dressing gown; and when the ceremony was over he took a jocular retrospect and prospect of political affairs.'[1]

This time there was no judicial cushion to break the fall. Lord Abinger had taken his place as Chief Baron and Lyndhurst was at liberty to devote his full energies to politics. The Chancellor's retiring pension had been raised by Brougham from 4,000*l.* a year to 5,000*l.*, and his position as a widower now admitted of a less costly mode of life. But the old habits clung to him, as we may read in Disraeli's description[2] of the fancy dress ball given

[1] Campbell, *Life of Lyndhurst*, 100. Presumably the Seals had not yet been delivered up.

During his second spell of office the Chancellor offered to Mr. Pemberton Leigh a puisne judgeship, to which, on his refusal, Sir John Taylor Coleridge eventually was appointed. The story ran that Lyndhurst asked Patteson, J., whom he considered the proper man for the vacancy. After some demur 'Patteson mentioned the name of his brother-in-law, Serjeant Coleridge. Lyndhurst laughed, and said he was caught, but seriously replied that Serjeant Spankie had done much for their party, and deserved to be considered' (*Random Recollections of the Midland Circuit*, 88). Spankie was the only Conservative who won a metropolitan seat in the *débâcle* of 1832, and he lost it in 1835. During the canvass he was told by a surly Finsbury tradesman that he would sooner vote for the devil than for a Tory. 'But suppose your friend doesn't go to the poll?' said the Serjeant with an insinuating smile.

[2] *Letters of Lord Beaconsfield*, 95.

(July 19, 1835) at the Hanover Square Rooms for the benefit of the Royal Academy of Music.

The finest thing was that at half-past two Lyndhurst gave a supper in George Street to eighty of the supremest *ton* and beauty, and you can conceive nothing more brilliant than his house illuminated with a banquet to a company so fancifully dressed. This great secession rather knocked up the ball, however, and everybody looked blue who was not going to Lyndhurst's. He looked like a French marshal.

The great measure of the Session, in the debates on which he perhaps reached the pinnacle of his parliamentary fame, was the Municipal Corporations Act, but, while it was still in the Commons, he made himself responsible for another Bill, the only legislative achievement, curiously enough, which is known as Lord Lyndhurst's Act. Up to that date marriages contracted between persons within the prohibited degrees were not *ipso facto* void, as they are to-day, but only voidable, and that only by sentence of the Ecclesiastical Court pronounced during the lifetime of both the parties.[1] Consequently the children of such unions were uncertain as to their own legitimacy until the death of one of their parents, and it was in the competence of any person, whether interested or not, to set the ecclesiastical law in motion. Marriage within the prohibited degrees was confined almost exclusively to the familiar case of the deceased wife's sister, and the then Duke of Beaufort, the 7th, was in the position of having married consecutively two half-sisters, the nieces, through their mother, of the Duke of Wellington. The title and prospects of the young Marquess of Worcester, a child of the second marriage, were thus at the mercy of anyone who chose to take the steps necessary to bastardise him, and Lyndhurst undertook to render such a course impossible. A modest little Bill—the title of which, 'to render certain marriages valid,' is significant of its origin—

[1] See Lord Selborne, *Memoirs Family and Personal*, ii. 24.

sought to enact that no marriage within the degrees of affinity, already celebrated, should be annulled for that reason by any ecclesiastical sentence, unless in a cause then actually pending. But in the eyes of the bishops and of a number of the lay peers these marriages were forbidden by the law of God and the law of the Church. They were willing, as Bishop Phillpotts said,[1] to 'protect the innocent issue from suffering for the guilt of their parents.' But they would tolerate no infringement of principle; the Bill, as originally drafted, had proposed to render these unions legal in the future,[2] and it became clear at once that in this form the measure would never pass, so, as the only means of saving it, a clause was substituted rendering all marriages hereafter celebrated between persons within the prohibited degrees of consanguinity or affinity absolutely null and void. The effect was to remove uncertainty from the law, which was thus made self-executing, and it is not unimportant to correct the popular notion that prior to the Act marriages within the prohibited degrees of affinity were legal.

Though the Bill met with considerable opposition in the Commons, it passed both Houses and received the Royal assent on August 31, 1835.[3] How far Lyndhurst was actuated in this matter by motives of friendship and how far by public policy is a point which may well be questioned. The Edinburgh Reviewer does not hesitate to say both of Lyndhurst and of Brougham that, where private legislation was concerned,

> personal friendship or complaisance towards a man, or gallantry towards a woman, or the desire to buy off an enemy or to reward a supporter, would be the predominant motives in determining what ought to be determined on the merits alone.[4]

[1] At a later date, February 25, 1851, Hansard, cxiv. 926.

[2] *Edinburgh Review*, cxxix. 565.

[3] 5 & 6 Wm. IV. c. 54. It will be observed that the term Deceased Wife's Sister is not to be found in it. And for Lyndhurst's own explanation, see *State Trials* (N.S.), vi. 103.

[4] The same writer (*loc. cit.* p. 602) hints not obscurely that some of

It was only to be expected that among the early labours of a reformed Parliament would come a wholesale cleansing of the borough corporations. Self-elected out of a close constituency of freemen, their powers subject to no popular control, and transacting their business in private, the great bulk of the municipal councils throughout the land were the objects of general dislike and distrust. They had ceased to represent the property, the intelligence and the population of the towns, and they were suspected of wasteful and corrupt administration of public funds. All this was notorious, and it might have been possible, one would have thought, to lay down a code of rules and regulations as the standard by which municipal corporations in the future should be governed. The Ministry preferred the method of the day by which all things in heaven and earth were handed over to a commission of Whig barristers of seven years' standing.

Their report was in preparation at the change of Ministry in November 1834, but it was not presented until the return of Lord Melbourne, and even then in an incomplete condition. On June 5, 1835, Lord John Russell introduced a measure based on their recommendations, which, with prunings and additions, became the Municipal Corporations Act in force to-day. In 183 boroughs it transferred the election of the Corporation from the freemen to the resident ratepayers divided into wards, by whom a municipal council, with power to elect the mayor, was chosen. The pecuniary rights of the existing freemen were retained, but they lost the parliamentary franchise, and future additions to their number were forbidden. All exclusive trading privileges were abolished, and provision was made for the management

these considerations affected Lyndhurst's judgment in the decision of the Bridgewater Case (vide *infra*, 158)—a charge which ought never to have been made without evidence which has never been, and, I believe, never will be, forthcoming. It may be admitted, however, that the decade between 1830 and 1840 witnessed a very undesirable laxity in the admission of Peerage claims, the responsibility for which rests mainly on the shoulders of Lord Brougham.

of the charity estates and for the appointment of salaried members of the Bar as Recorders.

The Bill passed easily and gently through the Commons; Peel refused to oppose it, partly from disinclination and partly from having pledged himself, in the King's Speech, to deal with the question. Far different was its reception in the Upper House, where both Eldon and Lyndhurst declared that it was even more dangerous than the Parliamentary Reform Bill. The latter was convinced that the colour of the new councils would be exclusively Radical, that their influence would radicalise the boroughs, and that, amid the general doom, the fate of the House of Lords would be decided within ten years at the latest.[1] There was a strong feeling among the Tory Peers over the feeble resistance which the Bill had encountered in the Commons, and Lyndhurst, by general consent, assumed command in the campaign against it.

On the other side Brougham, whom Melbourne had declined to reappoint as Chancellor, but whom he had not yet irreparably offended, was placed in charge, to fight, as he afterwards complained, single-handed. Committee was safely reached and then, on July 28, Lord Strangford carried a motion that the incriminated corporations should be heard by counsel, to defend themselves from charges contained in the Report, and against the general principle of the Bill. This occupied two days in the hands of Sir Charles Wetherell and Mr. Knight.[2] Then on August 3 Lord Carnarvon moved that evidence be taken. To this proposition Brougham would not submit, but it was carried by 124 votes to 54. Lyndhurst's speech, according to Disraeli, was 'by far the crack one, most bold and triumphant, and received with tremendous cheering.'

He stigmatised the whole Bill as intended not for the reform of corporations, but to consolidate and strengthen the party by whom it was brought in. Already instruc-

[1] Greville, iii. 313.

[2] Afterwards Vice-Chancellor and Lord Justice Knight Bruce.

tions with this object were being prepared for the commissioners whose duty it would be to demarcate the wards. Was there one noble lord out of twenty in that House who had heard the name of any one of those commissioners pronounced until they had seen the Report on their lordships' table? In his observations he did not mean to reflect in the slightest degree on the private characters of those gentlemen, many of whom he very well knew, but he wished to look at them in reference to their party feelings. In the first place, there was John Blackburne—everybody knew that he was a firm, unflinching Whig. George Long, a strong and staunch Whig. Fortunatus Dwarris had been in the habit of going upon the Circuit with himself, and was a Whig. Sampson Augustus Rumbell, a Whig and something more. Peregrine Bingham, a Whig and more. David Jardine—a determined Whig. Thomas Flower Ellis, a Whig, as his noble and learned friend would not deny. Henry Reeve, whom he had the honour of knowing, strongly Whig. Charles Austin, an able man, but he should say more than Whig. And so on through the whole twenty, all Whigs with the exception of Sir Francis Palgrave, until the rear was brought up by Mr. Joseph Parkes, who had obtained much notoriety in connection with the Birmingham Political Union, and was asserted, falsely, as it turned out, to be the secretary of that militant Radical body. 'Would to God,' exclaimed the orator, 'that he enjoyed his learned friend's power of ridicule to deal with the case.'[1]

Then, after a trenchant exposure of the methods of enquiry and reporting which the commissioners had, in some instances, adopted, and a further appeal to the House not to allow so sweeping a reform on such evidence, or to suffer the Conservatives throughout the country to be destroyed by a party job, he resumed his seat. But he was called up again before the close of the debate. Lord Lansdowne, who followed him, insisted with emphasis

[1] Hansard, xxix. 1390.

and iteration that the circumstance of a man being born a 'Whig, and something more than a Whig,' ought not to disqualify him for the exercise of judicial functions.

He was afraid that, if that circumstance were to be a disqualification, it would reach to much higher and more eminent characters than those who had been subject to the noble and learned Lord's insinuations.[1]

Lyndhurst did not affect to misunderstand, and met the insinuation with a flat disavowal. None the less, a few days later Lord Melbourne quietly assured the House that Lyndhurst, so far from denying that his political reputation in early days was more than that of a Whig, admitted it.[2]

The noble Lord says I admit it! broke in Lyndhurst. My Lords, I never did admit it, I do not admit it. There is not the slightest foundation for the statement. I heard of the attack and I repelled it, and it never was renewed till lately. It is a base calumny, and I give it the most unqualified contradiction.

But the matter was not allowed to rest there. In the penultimate stage of the Bill Lord Denman, who had been absent on Circuit, hurried up to London, and on August 27 'threw himself with all his wonted generosity, but with less than his usual discretion, into the affray.'[3] His object was twofold: to protect the commissioners from aspersions which Lyndhurst had carefully abstained from casting on them, and to bear personal testimony to the 'apostasy' of his old Sessions friend, for whom, as he declared, he had a great respect, and 'to whom he was indebted for a long succession of kindnesses.'

Lyndhurst once more made his invariable answer that, prior to his entrance into Parliament, what expressions he might have uttered on individual measures it was impossible for him to state, but he could unhesitatingly aver that he belonged to no party and was attached

[1] Hansard, xxix. 1412. [2] *Ibid.* xxx. 439.
[3] *Law Magazine*, xiv. 486. Hansard, xxx. 439.

neither to the Whigs nor to the Tories, nor, as was insinuated, to the Radicals. The Chief Justice shifted his ground and claimed that Mr. Copley of the Midland Circuit owed his original professional advancement to the belief that he entertained Liberal opinions.

I was never engaged but in one political defence, was the answer. That was on the trial of Watson. On that occasion Sir Charles Wetherell called on me as a Common Law lawyer and asked if I would join in the conduct of that defence. After taking a short time to consider I answered that I would.

'We give Lord Denman credit for the best and purest motives in this affair,' says a contemporary writer, 'but it is certainly much to be regretted that he embarked in it.' [1]

Between the 3rd and 27th of August many things had happened to the Corporations Bill. Lyndhurst's avowed object was to make it as favourable to the Conservatives as possible, and the counter projects were drawn up with his own hand.

He could get nobody to assist him; his private secretary turned out an ass. Then he sent instructions to Merewether; the result of M.'s labours, who has studied the subject all his life, arrived when I was with Lyndhurst. They were put in the fire, or rather fireplace, about ten minutes afterwards. Time pressed, and Lyndhurst literally had to draw every clause himself. This, with having to manage three agitated meetings, and to sit and watch the examination of witnesses from ten in the morning until twelve at night, knocked him up; but he is quite himself again and full of force and spirit. But for him all would have been lost, and now everybody praises the stand the Lords have made.[2]

The first night in committee showed the overwhelming strength of the Opposition. The majority was too great to admit of any thought of swamping the House

[1] *Law Magazine*, xiv. 486. [2] Lord Beaconsfield's *Letters*, 97.

with new Peers, and the alternative seemed to be to drop the Bill or to resign. But in the Commons a different spirit prevailed : Peel did not want another resignation ; the apple was not ripe, and he may possibly have felt some personal pique at the independent attitude of Lyndhurst and his followers. He saw his way to a compromise, and was sagacious enough to grasp one of those opportunities when the half is larger than the whole. The Government consented to the retention of the parliamentary franchise by the freemen, and to the presence of aldermen on the councils, but with a six-year instead of a life tenure. The rest of the Opposition amendments, for the most part, went by the board, and when the Bill was referred again to the Lords, Lyndhurst in his turn exercised the gift of moderation and resisted no further. It became law on September 4.

His conduct has been variously criticised ; he has been charged with 'wrecking' pure and simple, and with an insidious design to become the actual and even the titular head of the Opposition. Greville wrote in August :

> Lyndhurst took the lead with the violent party, overruled the Duke, neglected Peel, and dealt with the Government Bills in the most slashing manner. The way in which the Duke has been ousted from the leadership, and the alacrity with which the Lords have followed Lyndhurst because he led them into violent courses, is not the least curious part of the business.[1]

Lady Granville,[2] about the same date, heard from her London correspondents that 'Lyndhurst is perfectly ready to form a Government, and confident of success ;' there were wild but circumstantial rumours that Praed and Follett were to lead the Commons ; and on August 12 Disraeli announced to his sister :

> The Duke has formally resigned to him the leadership of the House of Lords, and there is every probability of his

[1] Greville, iii. 297.

[2] *Letters*, ii. 195.

being Prime Minister; his own disinclination alone stands in the way.[1]

Finally, the author of the obituary article in the 'Times,' published on the morning after his death, states without reserve, as an historical fact, that the King, meditating a second *coup d'état* at Melbourne's expense, did actually appeal to Lyndhurst to take the reins of office, on Peel's anticipated refusal, with the title of Earl Copley.

He accepted his Majesty's expressions of his desire as an injunction, and the terms on which he was to assume the Premiership were as formally arranged as such terms ever are.[2]

No word of corroboration has ever been forthcoming, and Hayward, who saw much of Lyndhurst just at this period, absolutely disbelieved it.[3] It is improbable in itself, and even more so in the details of the proposed arrangements; and it is equally improbable that Lyndhurst had ever, and especially at this moment, any ambition to be Premier, or that he would have consented to take the post. Γνῶθι σεαυτόν was a maxim he had ever followed, and 'his ambition was regulated by knowledge of what he could do and what he could not do.'[4] The Woolsack and an acknowledged supremacy in the House of Lords gave ample scope for the display of his highest qualities: he had no intention of putting out to sea in new and troubled waters. But his own dignified words should be the best answer:

I have been charged with having some party views to accomplish, some indirect ambition to gratify by this opposition; I deny it once and for ever. All my ambition has long been satisfied. I have twice, to borrow a phrase from these municipal proceedings, passed that chair. I have

[1] Lord Beaconsfield's *Letters*, 96. [2] *Times*, October 13, 1863.

[3] *Quarterly Review*, cxxvi. 28. He seems to suggest that Disraeli was the authority for the story, which would be an additional reason, in his eyes, for disbelieving it. Disraeli's own words are quoted above.

[4] Martin, 343.

twice, to borrow a phrase from a successful revolutionary usurper, had that splendid bauble carried before me. Whatever ambitious views I may have had in early life have all been fulfilled. My ambition has been gratified. I have no wish unfulfilled.[1]

The Whig historians have made the most of Peel's conduct in 'throwing over Lyndhurst,' as they term it, and Campbell glows with indignation when relating how he told the ex-Chancellor that Peel had approved of certain clauses which the Lords had struck out, and got for answer, 'Peel, d——n Peel! What is Peel to me?'[2] The true inwardness of the remark, as Mr. Kebbel suggests, was, 'd——n Jack Campbell!'[3] Lyndhurst regarded the Bill as a great political job, and as a check to the rising spirit of Conservatism in the country. And on two cardinal points he was successful. The retention of the aldermen has been found most beneficial in practice, and has been followed in the creation of the county councils. To have disfranchised the freemen within three years of the Reform Bill would have been a flagrant denial of the professions of the Reformers. It is not seriously maintained that the Bill as originally sent up to the Lords was a better Bill than that which received the Royal assent. Lyndhurst had done more than confirm his Parliamentary reputation: he had exposed the vulnerable spot in the Government harness. They had no longer sufficient popular feeling behind them to browbeat the Peers.

[1] Hansard, xxx. 1351. [2] *Life of Lord Campbell*, ii. 67.

[3] *Fortnightly Review*, January 1884. Campbell's own gloss on the passage (*Life of Lyndhurst*, 109) is worthy of a German commentator. 'This, however, might be only *badinage*, intimating that he would not be slavishly led by Peel, although he might still consider him head of the party.'

CHAPTER VI

LORD LYNDHURST IN OPPOSITION (*continued*)— CHANCELLOR FOR THE LAST TIME

1835–46

For the next two years, until another General Election had still further reinforced the Conservative party in the Commons, the House of Lords was their chosen battle-ground. Here not only were the Opposition in a majority but their superiority in debate was unquestionable. The quarrel with Brougham, which reached its climax on the appointment of Lord Cottenham to the Woolsack,[1] had deprived the Government of the only orator who could contend against Lyndhurst on equal terms. During the Session of 1836 Brougham abode, like Achilles, in his tent. From 1837 he had to be reckoned with as a relentless and vindictive foe. His place was very imperfectly filled, from a debating standpoint, by the new Chancellor, and Campbell, who, as Attorney-General, was responsible for many of the Government measures, especially those of a strictly legal character, makes no secret of the weakness of the Government:

> Lord Melbourne would give himself no trouble about them. They were left to Duncannon, who, though a man of excellent good sense, was wholly incompetent to enter the lists with Lyndhurst, and contented himself, generally, with reading the title of the Bill, moving that it be read a second time, and when it was opposed, saying, 'Well, my Lords, if your lordships object to the Bill, it would be in vain for me to press it, and therefore I withdraw it.'[2]

[1] Vide ***infra***, 345.

[2] *Life of Lord Campbell*, ii. 86.

In this manner many 'unexceptionable Bills' met their doom; and in an address to his Edinburgh constituents Sir John spoke plaintively of Lord Lyndhurst's conduct:[1]

I enumerated the Bills of mine that he had murdered. I mentioned one little one to which I was particularly attached, and which I went down on my knees to implore him to spare:

Unam minimamque relinque;
De multis minimam posco.[2]

But the fatal arrow flew and it was laid prostrate with its bleeding brothers.

Lord Melbourne had once quoted with approval the alleged dictum of William III. that, whatever differences there might be about the form of Government, the worst Government was undoubtedly that which could not carry its own measures. And there cannot be much sympathy for an administration which attempted to transact its business on the lines indicated by Lord Campbell. There will always be a wide difference of opinion as to what Bills are 'unexceptionable' and 'uncontentious.' Lyndhurst contended that the Bills which received their quietus in the House of Lords were crude, defective, and unworkable. Abraham Hayward, whose exertions for the reform of our whole legal system have never received adequate recognition, is entitled to be heard in this behalf:

Lord Lyndhurst's excellencies obviously lay in the discrimination and sagacity with which he checked bad measures and promoted good; in the practical good sense, sound knowledge, and breadth of view with which he guided the deliberations of the Peers. He originated little, but he corrected, perfected or improved much, and it is no slight praise to say that without his controlling care the statute book and the jurisprudence of England would be much more imperfect than they are. Sound and useful measures are sure to pass in the long run; they had better not be passed

[1] *Life of Lord Campbell*, ii. 93. [2] Ovid, *Met.* vi. 300.

till the public mind is ripe for them, and Lord Lyndhurst frequently did excellent service when Lord Campbell could see nothing but the mischievous meddling of an obstructor general.[1]

It is only fair to say that this *éloge* covers the whole legislative career of Lord Lyndhurst, and has no special reference to the years 1835–41. That during a portion of this time he allowed his party zeal to get the better of him is practically admitted in his remark to Greville, made in 1837, that he should not 'go on this year as he had done in the last.'[2]

An illustration of his open mind may be found in the Bill for allowing counsel to prisoners charged with felony. At an earlier date he had offered an uncompromising and successful resistance to this measure in the House of Commons.[3] But time and, we may conclude, four years' Circuit experience as Chief Baron had altered his views. In his own words :[4]

> he was satisfied that his former conclusions as to the evils and inconvenience that would arise from the proposed change were exaggerated, and he was now persuaded that those evils would be of no great magnitude and would be more than counterbalanced by that great rule of justice on which the change was founded—impartiality.[5]

The Bill had reached the Lords early in the Session of 1836, but Brougham, its sponsor, was still sulking in Westmoreland, and it remained for weeks in a Parliamentary limbo. Then, 'because no member of the King's Government seemed disposed to do so,' Lyndhurst took it up, carried it through the various stages, and did not rest till it was on the statute-book. The removal from our criminal code of this remnant of the dark ages may fairly be set against his refusal to change the system of

[1] *Quarterly Review*, cxxvi. 29.
[2] Greville, iii. 378.
[3] Vide *supra*, 38.
[4] Hansard, xxxiv. 770.
[5] Mr. Justice Park (James Alan) threatened to resign his seat on the Bench if the law was altered, but finally thought better of it.

revising barristers, or to amend the recently passed Corporations Act.

During the debates on the latter the Government had pledged themselves to extend its principles to Ireland; and, accordingly, in the Session of 1836 the Irish Municipal Corporations Bill was introduced. It met with the most strenuous opposition in both Houses. Its parentage was, not unduly, attributed to O'Connell, without whose support the Whig administration was powerless, and the Liberator was at no pains to conceal his intention of treating the reform of the corporations and the substitution of Roman Catholic for Protestant councillors as a step towards Repeal of the Union. Successful in the Commons, the Bill met with the usual fate of Government measures in the Lords. The amendments were such as could not be accepted, and were, indeed, never meant for acceptance. The Lords, in their turn, were equally obstinate, and after they had affirmed their position by a majority of ninety-seven, the Bill was withdrawn.

On June 9, during one of the debates on the Lords' amendments, Lord John Russell asserted that he had heard Lord Lyndhurst say, 'in another place,' that

> three-fourths of the people of Ireland were aliens in blood, differing in language, differing in religion, and waiting only for a favourable opportunity of throwing off the government of this country as the yoke of a tyrannical oppressor.

Lord Lyndhurst promptly denied that he had said any such thing; but the words thus imputed to him brought down a perfect torrent of vituperation on his head. He had not long to wait for his revenge. A few nights afterwards the Bill came back from the Commons.

> Lyndhurst spoke very ably, records Greville, by far the finest style of speaking, so measured, grave, and earnest, nothing glittering and gaudy, but a manly and severe style of eloquence.[1]

[1] 'A masterpiece,' wrote the enthusiastic Disraeli; 'since Canning there has been nothing like it' (*Letters*, 105).

After a closely reasoned reply to Lord Melbourne, he turned upon O'Connell, who had led the assault in the Commons, and who was now seated below the bar of the House:

This person has so scathed himself, has so exhibited himself in a variety of postures, and not always the most seemly and decent, amid the shouts and applause of a multitude, that all description upon my part is wholly unnecessary. But these exhibitions have not been bootless to him; he has received lavish contributions, I may say ducal contributions, from the connections of the present Government, while at the same time he has wrung, by the aid of the priests, the miserable pittance from the hands of the starving and famishing peasant. This person has, in every shape and form, insulted your lordships, your lordships' House, and many of you individually; he has denounced you, doomed you to destruction; and, availing himself of your courtesy, he comes to your lordships' bar, he listens to your proceedings, he marks you and measures you as his victims, *Etiam in senatum venit, notat designatque oculis ad caedem unumquemque nostrum.*[1] The person whom these expressions originally defined had at least one redeeming quality; witness the last scene of his life if you read it in the description of the historian. Mindful of his former elevation and dignity, so able, so politic, so eloquent, he ever retained the virtue of courage.[2]

What were the words, Lyndhurst enquired, which he was charged with using? That the Irish were to be denied the same municipal institutions as the English, because they were aliens by descent, because they spoke a different language, and had different habits from ours,

[1] Cicero, *In Catilinam*, i. 1: 'O'Connell came into the House, but he will have it, *after* Lyndhurst had done speaking about him. However, he *was* there, and it was a grand hit, for everybody believed him to be there' (Lord Beaconsfield's *Letters*, 105).

[2] Hansard, xxxiv. 890. The full sting of the last passage lies in the reference to O'Connell's invariable refusals to 'go out' after his fatal duel with d'Esterre. This self-denying ordinance ought to have been accompanied by some restraint on his tongue.

because they considered us to be invaders of the soil, and were desirous of removing us from the country.

I made no such statement, nor did I say anything at all resembling it. No expressions ever fell from me upon which any person, not of a weak intellect, or not disposed to misunderstand and misrepresent what I stated, could have put such a construction.

But after this disclaimer the speaker indulged in a strong justification of the words which he had repudiated ; and Lord John maintained to his dying day that he had quoted the words exactly as they fell from the speaker's lips. Indeed, it is difficult, after reading Lyndhurst's own apologies and the defence offered on his behalf by Peel,[1] to believe that in the heat of debate he did not utter them ; and the phrase, whether Lyndhurst's or Lord John's, was not allowed to be forgotten. The Irish Municipal Bill was again introduced in the following Session, and on February 22, 1837, Sheil made his grand declamatory tirade. Full notice had been given of his intention, and the accused resolved to be present in person. Accordingly, when Sheil arose to deliver himself his eyes encountered those of Lyndhurst sitting erect and nonchalant below the bar. As he poured out his flood of eloquence,[2] 'gesticulating, foaming, screeching,' he raised his hand towards the ex-Chancellor of England, and the attack was taken up by his countrymen around him. The more excitable among them sprang to their feet cheering tumultuously and vociferously, turning upon Lyndhurst with every possible ges-

[1] 'Was every hasty expression that might have fallen from an individual in this way to be taken up, considered as a matter of history, and handed down as national prejudice ? Did Sheil never hear of an Irishman who spoke of the Duke of Wellington as a stunted corporal ? '

[2] 'Blackguardly ferocity' is Greville's uncomplimentary term. Hansard (xxxvi. 935) gives no clue to the scene. One sentence of Sheil has lived. 'I am surprised that, at the moment the phrase was uttered, Arthur, Duke of Wellington, did not start up and say that these aliens had done their duty.'

ture and intonation of insult. The din lasted for nearly ten minutes, in spite of all the endeavours of the Speaker. But the object of so much execration sat totally unmoved, neither attempting to stir nor changing a muscle of his countenance.[1] The present generation of Parliament men has witnessed many a scene which for the credit of the House of Commons they would gladly forget, but the 'booing' of a stranger within their gates is not among them.

This was by no means the last time that Lyndhurst was to have the unlucky phrase twisted against him, and the most effective application of it was due to his own indiscretion. A discussion having arisen in the House of Lords a year or two later respecting the Lord-Lieutenancy of Ireland, he fastened upon some words which the new viceroy, Lord Ebrington, had spoken relative to the 'war which is now raging against the Protestant Church of Ireland,' and insisted that they incapacitated the noble lord for the due discharge of his high office.[2] Lord Lansdowne reminded him that if any man was interested in not having particular expressions selected for remark without their context, that individual was Lord Lyndhurst himself. And when, in March 1844, Sir James Graham imprudently referred to Lord Ashley's Factory Bill as 'Jack Cade legislation,' the Chancellor is said to have rubbed his hands with glee, saying: 'Well, we shall have no more of aliens now, for the future people will only talk of Jack Cade.'[3]

The Session of 1836 down to its very close was full of mortification for the Government. As if to provide their most formidable adversary with a fresh opening, Lord Holland indulged in a final diatribe, shortly before the prorogation, charging Lyndhurst with having mutilated the Government Bills, a course which was calculated, he

[1] Greville, iii. 389, and *Morning Herald* for October 13, 1863, quoted by Sir Theodore Martin, 376.

[2] February 28, 1839, Hansard, xlv. 950.

[3] Greville, 2nd ser. ii. 237.

declared, to alienate from the House of Lords the regard and respect of the country. Lyndhurst immediately gave notice of his intention to 'move for papers;' and on August 18 he delivered the first of those summaries of the Session which contributed as much as any single cause to the decline of ministerial prestige.[1]

It was, indeed, a most scathing comparison between the brilliant anticipation contained in the King's Speech and the sad reality:

a result as disproportionate in execution to the expectations which were held out, as the lofty position of the noble Viscount at that period with what he will allow me to style his humble condition at the present moment. . . .

> His promises were, as he then was, mighty,
> But his performance, as he now is, nothing.

The orator dealt *seriatim* with the long list of legislative catastrophes, beginning with that Bill for the reform of the Court of Chancery produced by Lord Cottenham,[2]

which I have too great respect for his understanding to suppose could be his own production. . . . *Requiescat in pace*, I will not disturb its ashes.

And after proceeding through his inventory in tones that grew more and more exasperating he finally dismissed his victims with a douche of icy scorn:

And this, my Lords, is a Government. Was there ever in the history of this country a body of men who would have condescended so low as to attempt to carry on the Government under such circumstances? In this House they are utterly powerless, they can effect nothing; we, on this side of the House, are obliged to perform the duties of the Government for them. In the other House of Parliament the measure which they themselves have advised and prepared and brought forward, involving, as they tell us, the most important interests

[1] 'The Duke of Rutland writes word that Lord Lyndhurst's speech is making an immense effect in the country. Lord Granville sneers at this. *Che vi par*, my dear lady' (*Letters of Lady Granville*, ii. 214). The speech was published and ran through twenty-nine editions.

[2] Vide *infra*, 395.

of the country, they, without scruple, tamely abandoned at the dictation of any section of their supporters. Yet, thus disgraced and trampled upon, they still condescend to hold the reins of Government—proud men, eminent statesmen, distinguished and high-minded rulers ! [1]

Free from the trammels of judicial duty, Lyndhurst spent the winter in Paris, mixing with remarkable people of every sort and condition, including Victor Hugo, Balzac, and the men of the Romantic movement. He had never passed such an agreeable time, he told Greville,[2] though even there Galignani would not let him forget that he was the best-abused man in England. The varied charm of Bohemian and cosmopolitan Paris was as much to his taste as the fashionable Embassy circles in which his lot had hitherto been cast. He was back at the beginning of February, and told Hayward that he should not stay wasting his time in London unless something turned up soon. 'He is as careless about politics,' was Hayward's comment, 'as a dandy of twenty; he thinks of nothing but flirting.' [3] But the latter can hardly have been deceived by the pose; and Lyndhurst found plenty to occupy his attention in Parliament, including, as we have seen, the ferocious onslaught of Sheil. The more confident of the Tories had calculated upon either turning out their adversaries in the Session of 1837 or forcing them to dissolve; and the tactics were adopted which had proved so successful in the previous year. A Bill had to be extremely 'uncontentious' if it was to survive the scrutiny of the Peers now reinforced by Brougham, breathing out threatenings

[1] Hansard, xxxv. 1293. [2] *Diaries*, iii. 378.

[3] *Correspondence of A. Hayward*, i. 60. More than two years afterwards, in an account of a Greenwich dinner given by the Duchess of Cambridge, Greville (2nd ser. i. 229) describes how Brougham insisted upon dancing with Lady Jersey, and how Lyndhurst 'capered' with the Dowager Lady Cowper, afterwards Lady Melbourne. And again in 1842 (*ib.* ii. 118) he tells how before a council at Windsor the Chancellor 'began a sort of dancing movement which reminded me of Queen Elizabeth and the Scotch ambassador.' He was fulfilling his father's words: 'You will be a boy, Jack, all your life.'

and slaughter against his old colleagues. There had always been a strong mutual liking between the two ex-Chancellors, which had survived many a shrewd blow in the Law Courts and in the Legislature. Neither would ever allow the other to be depreciated in his presence, and they had one never-failing bond of union—the love of tormenting Sir John Campbell.

The Government was continuing steadily to lose ground, when the death of William IV. and the accession of Queen Victoria temporarily restored the Whig fortunes. Lyndhurst was present, of course, at that memorable Council of Kensington when, in the bright June morning, the Notables of the United Kingdom plighted their fealty to the maiden Queen.

As we drove home, says Disraeli,[1] he gave me an animated picture of what had occurred in the Presence Chamber, marked by all the penetrating observation and happy terseness of expression which distinguished him.

According to a statement made by the Duke of Argyll to Mr. Creevey,[2] the youthful sovereign made him the mark of her especial displeasure on the occasion of her first levee. Lyndhurst's political opponents were not likely to minimise any 'nuance' in the Royal bearing which might be to his prejudice; but, apart from all other considerations, the story is most improbable, in face of the statement by Greville, who particularly noticed the Queen's demeanour towards Ministers and ex-Ministers at the accession council, and who has recorded that she did not make the slightest difference in her manner to any individual of any rank, station, or party.[3]

The General Election left the Government with a nominal majority of fifty. The relations of Melbourne with the young Queen, as well as the disloyal utterances of certain of the 'Orange' Tories, were distinctly damaging to the Opposition, and it was more than four years

[1] Preface to works (1870 edition). [2] Creevey, ii. 323.
[3] Greville, 1st ser. iii. 407.

before the return to power of Sir Robert Peel, which had seemed so imminent in 1837, became an accomplished fact. They were years of storm and stress for the Government ; and the loss of temper, and even of manners, which distinguished more than one of Lord Melbourne's speeches at this epoch, shows how deeply the flouts and gibes of Lyndhurst went home.

It was no doubt exasperating to hear a Cabinet minute described as ' a document historically false, argumentatively false, legally false, and the unconstitutional character of which is only equalled by its folly, its extravagance, and its absurdity.' And on another occasion the Premier was betrayed into language which was within an ace of occasioning one of those ' meetings ' between political opponents which were rapidly passing out of date.[1] Lyndhurst had put, without notice, a question as to some young children who had been placed in solitary confinement in Millbank penitentiary, and in eloquent language had protested against the evil effects inseparable from such a system. Melbourne, irritated by some taunts on the part of Brougham, characterised Lyndhurst's speech as ' calm and artful.'

I hope, was the reply, that the statement I made was calm, but I can assure your lordships that it was not artful. That the noble Viscount and the other members of the Government should be ignorant of the facts contained in the statement I have made only proves that they are as ignorant of their domestic duties as they are incapable of managing the colonial affairs and foreign relations of the country.

This was too much for Melbourne, who lost all semblance of self-control.

The Duke of Wellington, he exclaimed, would have sooner cut his right hand off than have taken such a course as that taken by the noble and learned lord. The noble Duke is a gentleman ; the noble Duke is a man of honour.

[1] February 27, 1838 ; see Hansard, xli. 190 *et seq.* ; Greville, 2nd ser. i. 69.

The insult was gross and apparent, and Lord Lyndhurst was a dangerous adversary to rouse.

The observation, he said, rising slowly from his seat, which is true of the noble Duke, was applied by the noble Viscount in such a manner as to bear a different construction when applied to others. I beg an explanation.

Melbourne could, on occasion, stand up to Brougham and return him as good as he gave, but with Lyndhurst he was never quite at ease; he shuffled and was again pinned to his words; he still refused an explanation, and Lyndhurst was leaving the House to write a hostile message when Brougham intervened as peacemaker, and the Prime Minister at the eleventh hour made a proper apology.

But there was neither truce nor peace between them. In 1839 Lyndhurst gave another of those annual summaries of the Session which laid bare so ruthlessly the impotence of an Administration that had exhausted its mandate. On August 30 John Duke Coleridge, then an undergraduate at Balliol, wrote to his father, the judge: 'How utterly Lord Melbourne failed before Lord Lyndhurst! A few very bitter, sarcastic, and well-expressed *tu quoques* seem to be all he had to oppose to the splendid speech against him.' [1]

On August 7, 1837, Lord Lyndhurst was married in Paris, at the British Embassy, to Georgiana, daughter of Mr. Lewis Goldsmith. The acquaintance had been short, but the marriage was in every respect a most happy one. The second Lady Lyndhurst, like the first, was a very handsome woman. She made a devoted wife, and survived her husband by many years, dying

[1] *Life of Lord Coleridge*, i. 70. The following sample of Melbourne's sarcasm seems certainly to be wanting in finish: 'What entitles the noble and learned Lord to censure and condemn? Is his character so high? . . . I have always expressed a great respect for his abilities, and I repeat what I have more than once in this House stated, that I confine my respect to his abilities.'

in December 1901.[1] Somewhat earlier, in January 1836, he had lost his mother. Though she was over ninety, she had fully retained her faculties of mind and body, and she was conscious to the last of the tender and dutiful affection of her son. From this time forward his unmarried sister, Miss Mary Copley, became a permanent member of his household, and a year or two later the elder sister, Mrs. Greene, made her first visit to Europe since she had quitted England in 1800. It seems almost incredible that a brother and sister so tenderly attached as were the Copleys should have allowed forty years to pass without one or the other crossing the Atlantic; and it helps us to realise the extent of the gulf which modern science has bridged.

In the autumn of 1840, while drinking the waters of Marienbad, Lyndhurst learned that he had been put in nomination for the post of High Steward of the University of Cambridge, vacant by the advancement of the Duke of Northumberland to the Chancellorship. Such an honour at the hands of his old parliamentary constituents was one that he highly appreciated, but a formidable opponent in the shape of Lord Lyttelton was already in the field. Lord Lyttelton was a Conservative, and his candidature was largely supported by that section which placed churchmanship before party. It was even rumoured that Peel was interested on behalf of the brother-in-law of young Mr. Gladstone; but that statesman hastened to scotch the rumour by writing a strong letter on behalf of

a former colleague and personal friend, with whom, in office and out of office, I have always been on the most confidential intercourse in public matters.[2]

He went further, and, though an Oxford man, subscribed 50*l.* to the election fund which was being raised.

[1] For a pleasant reminiscence of her, see *Bygone Years*, by Frederick Leveson Gower, 54.

[2] Martin, 438.

The sum subscribed for this purpose was so much in excess of what was needed that a portion of the surplus was devoted to a bust of the Lord Chancellor which now, as a gift from Lady Lyndhurst, stands in Trinity Library. From his nomination the issue had never been really in doubt, and he was elected by 973 votes to 488.[1] He was inaugurated at his house in George Street, and the deep rich tones in which he expressed his delight at thus 'returning home' were never forgotten by those who heard them.

On May 27, 1841, Sir Robert Peel carried a motion of want of confidence in the Ministry by a single vote. Parliament was dissolved in June; at the elections the Whigs sustained a disaster without parallel since the days of 'Fox's martyrs;' and on August 30 Lord Melbourne resigned. One spring evening in 1836 Lyndhurst had dined with Hayward in his chambers in the King's Bench Walk. Theodore Hook was there, and James Smith of the 'Rejected Addresses,' and Mrs. Norton, 'dressed in pink with a black lace veil, her hair smooth with a twist behind, and a string of small pearls across her forehead.' Dinner was over, and he

stood at an open window looking over the Temple Gardens in a meditative mood, when a lady asked him what he was thinking about. 'I was listening to those bells'—the very

[1] 'I managed to get to Cambridge on Friday last. The Vice-Chancellor rose for the day to facilitate the departure of the Bar; he himself and the majority of our fraternity going for Lyndhurst. I was, as you (Dr. Hook) suppose, in the minority. I confess after your letter as to the High Church portion of the clergy, and after hearing that Baptist Noel and Cunningham had also taken up the contest as one of principle, I did not expect quite so sound a thrashing, and I question the wisdom of Lord Lyttelton's committee in going to the poll' (*Life of Lord Hatherley*, i. 275). 'Lyndhurst was opposed as an old man who had had enough of the good things of the world, and as a Tory; and reports were circulated of his private life which ought not to have been encouraged upon such an occasion by those who had the means of checking them' (*Personal Remembrances of Sir Frederick Pollock*, i. 168).

Bow bells that called back Whittington were ringing at the time—' they seem to be calling to me :

> Turn again, Lyndhurst dear,
> Three times Lord Chancellor.' [1]

On September 3, 1841, he received for the last time the Great Seal from his sovereign, and on September 6 he took once more his seat upon the Woolsack.

One of the first acts of Sir Robert Peel was to make an important addition to the strength of the judicial Bench in Chancery. Lord Cottenham had elaborated a new Bill for the 'Administration of Justice in Equity' which, amongst other things, provided for the creation of two additional Vice-Chancellors. This measure had been thrown over in 1840, according to legal gossip, because the Government could not agree how the new judgeships were to be filled, and in the following session it was abandoned because Parliament was unwilling to entrust the patronage to a ministry in which it had lost confidence. It was now carried through by Sir Robert, and the appointments of Mr. Wigram and Mr. Knight Bruce gave universal satisfaction. It will be remembered that the creation of an additional Equity judgeship was the kernel of Lyndhurst's abortive Bill in 1830, and in his subsequent speeches in the House of Lords he had never ceased to advocate it.

In spite of the fact that the same measure which

[1] *Quarterly Review*, cxxvi. 35. It was on this occasion that Hayward told of Madame de Genlis—an 'invented pleasantry' as he admits—that she kept her books in detached cases, the male authors in one and the female authors in another. 'I suppose she did not wish to add to her library,' said Lyndhurst. Hayward, in his letters, rescues the jest from the claim to it put forward by James Smith. Another celebrated Smith, the Rev. Sydney, had been bidden to the feast. 'The ladies,' he replied, 'are the most impregnable, and the gentlemen the most unimpeachable of the sex, but still I have a feeling of the wickedness of supping in the Temple.' Technically speaking, Lyndhurst at this date had already been 'three times Lord Chancellor,' as the death of George IV. caused a vacancy in the office, though it was accompanied by no breach of continuity.

created the vice-chancellorships abolished the equitable jurisdiction of the Court of Exchequer the new judges were quite equal to keeping down the arrears of causes. But as a consequence of this the Master's offices, to which all the incidental proceedings had to be referred. became still more congested, and the suitors were, if anything, in a worse plight than ever. A step in the right direction was taken by the abolition in 1843 of the office of the Six Clerks, who, from having been the effective solicitors in the transaction of public business, had gradually passed to the discharge of merely nominal duties and ultimately become clogs upon the wheel to which they formerly supplied the momentum.[1] The merit of this proper and useful measure was sadly tarnished in the eyes of the economists by the enormous compensation granted to the disestablished officials.

But the duties of the Lord Chancellor as a judge of first instance were appreciably lightened, and Lyndhurst was at liberty to devote more time to the reform of the law. Following the example of Lord Cottenham, he requested a small number of eminent Chancery counsel to resolve themselves into a sort of informal commission to consider the wisest method by which the abuses of the Equity Courts might be mitigated, and the Acts for the amendment of bankruptcy and lunacy proceedings were among the fruits of their deliberations. The former was also based carefully upon the recommendations of the Bankruptcy Commission; like too many of its successors, it failed dismally to fulfil the hopes inspired by it.

Still the years of Lyndhurst's last Chancellorship were fruitful in sound legislation, and his peculiar gifts and great eye for detail enabled him to give effective shape to the cruder legislative projects of others. Any genuine measure for the amendment of the law received his support. It was a standing grievance of Lord Campbell that his projects for altering the laws of

[1] *Law Magazine*, xxix. 311. The Act was 5 & 6 Vict. c. 103.

England were treated with scant courtesy by Lyndhurst, who quoted at him

Diruit, ædificat, mutat quadrata rotundis;

or, still worse, adopted his Bills after having previously made sport of them. Yet he allows that the Chancellor gave him invaluable assistance in his successful effort to amend the law of libel, and he bestows unstinted praise on Lyndhurst's achievements which extended the Dissenters' Marriage Act to Ireland, repealed the statute of Præmunire, and confirmed Unitarians in the enjoyment of their endowments when a prescription of twenty-five years could be shown. His warm championship of the Copyright Act[1] will always be remembered gratefully by the confraternity of the pen, and his name deserves to go down to posterity with Serjeant Talfourd and Lord Mahon among those who have been most effectual in securing to the author a fair recompense for the labours of his brain. And Campbell has nothing but praise for the speech in which the Chancellor introduced his Bill for the regulation of charitable trusts:

In making an introductory statement of any measure he ever displayed powers unrivalled in either House of Parliament. Whatever the subject might be, no one could be within sound of his voice without eagerly listening and warmly admiring, although he might remain unconvinced.[2]

During the debate Lyndhurst gave an illustration of Chancery costs as applied to applications on charities, and declared that it was hopeless to institute a suit in Chancery where the sum concerned was less than 1,000*l*.

In the case of large ones the expenses are enormous; in the case of charities of moderate amount the expenses are ruinous, and when there are abuses in the small ones there is an absolute denial of justice; one day's entrance into a Court of Chancery would annihilate them.

None the less, the Bill was thrown out by two votes in the closing hours of Peel's Administration by a com-

[1] 5 & 6 Vict. c. 45. [2] *Life of Lyndhurst*, 155.

bination between protectionist peers and Whigs who, like Lord Campbell, found the temptation into which they were led too strong to be resisted. 'Factious coalition of Whigs and protectionists against the Government Bill for the administration of charities' is Campbell's *mea culpa*.[1]

Of Lyndhurst's behaviour on the Bench one cannot speak in quite the same laudatory terms. His merits have been absurdly depreciated by Lord Campbell, but Sir Theodore Martin has run into the other extreme. Lord Selborne, whose impartiality is beyond cavil, has formed an estimate which is nearer to that of Campbell.

> Lord Lyndhurst, he wrote many years afterwards, was not, within the sphere of my observation, great as a judge. My knowledge of him in that character was only during his last Chancellorship from 1841 to 1846, when he took things very indolently and easily, affirming almost indiscriminately the judgments brought before him on appeal. It was depressing to argue before a Chancellor whose heart did not seem to be in the business, however famous he might be as an orator or statesman.[2]

And Lord Brougham [3] has given his adherence to 'the common impression that on the Bench he was not in earnest.' It was generally acknowledged, moreover, that his oral judgments were superior to his written ones, which were too frequently 'devilled.'

There is some truth in the remark of a brilliant modern writer [4] that Lyndhurst never cared enough for law to become a great lawyer; nor is it inconsistent with the industry and application with which he qualified himself for his destiny. 'Great lawyer' is a relative term, and it also means many things. No one would dream of applying it to Lyndhurst in the same sense as to Eldon or Cairns. But it is possible to possess a great

[1] Campbell's *Life of Brougham*, 541, side note.
[2] *Memoirs Family and Personal*, ii. 372.
[3] *Life of Lord Brougham*, iii. 436.
[4] *A History of Modern England*, by Herbert Paul, ii. 354.

legal intellect, or a great judicial mind, without having an absolute mastery over the intricacies of Equity practice. In the ordinary routine of his Court, in the decision of those small points which arise from hour to hour out of the day's business, and have to be determined on the spur of the moment, he was inferior to Vice-Chancellor Wigram or Vice-Chancellor Knight Bruce. In cases of difficulty and intricacy where the nimblest intellects of the profession had been employed in eager combat he was seldom found wanting. His eye was upon the case immediately before him rather than upon the elucidation or the establishment of some controverted principle of Law or Equity. In Bagehot's language[1] he was a judge for the parties rather than a judge for the lawyers; an acute discerner of fact, an accurate weigher of testimony, a nice discriminator of argument. He was content to deal out justice in the particular matter in Court without laying down principles applicable to other disputes. 'If a wise man had a good cause,' says the same author, 'he would prefer its being tried before Lyndhurst to its being tried before anyone else.' As Brougham concisely puts it, he possessed the faculty of splitting the nut, throwing away the husk and getting at the kernel.

Nor has he ever been surpassed in the gift of grave and lucid exposition. 'He was a master of the judicial style which befits the House of Lords,'[2] and there did his really great judicial qualities find their proper scope. And if the five last years during which he presided in Chancery left no deep mark in the Law Reports, they were never forgotten by anyone who had ever seen him in Court, an ineffaceable picture of dignity and of the majesty of the law. The figure of Lord Lyndhurst shines out even through the moral and material fog of Jarndyce *v.* Jarndyce, as he talks in his private room to Richard Carstone, 'not seated but standing, and altogether with more ease and less ceremony, as if he still knew, though he *was* Lord Chancellor, how to go straight to the candour

[1] *Biographical Sketches*, 67. [2] Herbert Paul, *l.c.*

of a boy.'[1] And the late Lord Coleridge would often speak of the gracious courtesy which the old man never failed to extend to the younger members of the Bar. 'Silence, silence for learned counsel' would be constantly on his lips if he saw some nervous junior trying to make himself seen and heard above the crowd and hubbub on motion days.[2]

In the House of Lords his name is associated with not a few important decisions. In the case of Lord Canterbury against the Queen, where the nobleman who, as Mr. Manners Sutton, had been Speaker at the date of the fire which destroyed the Houses of Parliament in October 1834, appeared as complainant, he held that a petition of right will not lie against the Crown for damages on account of injuries occasioned by the negligence or misconduct of persons in the service of the Crown.[3] And in a famous but much disputed case testing the validity of marriages solemnised before the Registrar in a dissenting chapel in Ireland, he was one of the three peers who upheld successfully the thesis that by the Common Law of England a marriage *per verba de præsenti* must be entered into before a person in Orders.[4]

The most historical of his judgments was delivered on the writ of error to quash the indictment on which O'Connell had been convicted at Dublin. On September 4, 1844, Lyndhurst, fortified by the great majority of the English judges, moved that the conviction be affirmed, delivering his speech, as usual, without any reference to notes. Brougham followed on the same

[1] *Bleak House* began to appear in 1852. Dickens was a clerk in the office of Mr. Edward Blackmore of Gray's Inn from May 1827 to November 1828. 'After he left me,' says Mr. Blackmore, 'I saw him at times in the Lord Chancellor's Court taking notes as a reporter.' His transit in that capacity to Doctors' Commons and then to the gallery of the House of Commons followed rapidly, and the only Chancellor in whose Court he ever reported was Lord Lyndhurst.

[2] The Lord Chief Justice was called to the Bar in 1846. For an illustration of Lyndhurst's good nature to juniors, see the *Life of Lord Hatherley*, i. 53.

[3] 1 Phillips, 306.

[4] Reg. *v.* Millis, 10 Clark and Finnelly, 534, and vide *infra*, 363.

side, but Denman, Cottenham, and Campbell, 'all three steady Whigs,' as the latter remarks, 'were by some strange chance for reversing it.' The battle was not over, however. The Tory Peers were thirsting for the blood of the Arch Repealer, and when the question was put from the Woolsack that the judgment of the Court below be reversed, a number of voices not belonging to the law lords cried, 'Not content.'

It was a grave crisis: the character of the supreme tribunal for impartiality, indeed its very existence as a court of law, was at stake. The distinction between law lords and lay lords was theoretically unknown to their lordships' House; there was nothing to prevent any member taking part in its judicial proceedings, and there were cases of comparatively recent date in which lay lords had exercised the right of dividing on the hearing of appeals. But if these admitted exceptions were to be followed, the authority of the House of Lords as a court of justice and as the fountain of precedent would not only be impaired but ruined. Lord Wharncliffe, the President of the Council, implored his brother peers not to break through the honourable tradition; he was followed by Brougham and Campbell. And, last of all, Lyndhurst, whose influence in the assembly was of a different order from that exercised by his learned brethren, threw his weight into the scale.

I think, he said, those noble Lords who have not heard the arguments will decline voting if I put the question again.

And the noble Lords accordingly withdrew. Few members of the House had been more truculently assailed by O'Connell than Lyndhurst, and he must have been more than human not to rejoice at this opportunity of heaping coals of fire upon the head of his enemy.[1]

[1] *State Trials*, N.S. v. 912. Besides his duties in Chancery and the House of Lords, Lyndhurst took his share in the work of the Judicial Committee of the Privy Council. He was the author of the Act which

In the matter of patronage Lord Lyndhurst displayed a rare disinterestedness. He handed over the right of nominating the masters in Chancery to Lord Langdale, the Master of the Rolls, and their titular chief. The Lunacy Act gave to the Lord Chancellor the appointment of three medical and three barrister commissioners. These posts he requested Lord Shaftesbury (then Lord Ashley) to fill, on the ground of his labours over the Bill and his knowledge of the men possessing the requisite qualifications. The Chancellor intimated a desire that a certain medical man of his acquaintance should be put on the list if qualified. When assured that he was not a fit person, he answered, 'Quite enough.' [1] His judicial appointments were excellent: Erle, Cresswell and Alderson to the Common Pleas, Bolland and Platt to the Exchequer, and Parke, Taunton, Patteson and Coleridge to the Queen's Bench. If anything he was too lavish in his bestowal of silk; it was said of him that he turned out Queen's Counsel in batches as if they were bakers' loaves.

In domestic politics those were halcyon years, and only once was he brought down into the arena. The occasion (July 14, 1845) was a vote of censure upon the Chancellor of Ireland, Sir Edward Sugden, for his action in removing from the Commission of the Peace certain Irish justices who had convened and attended O'Connell's Repeal meetings. Lyndhurst took a decided line in

gave that body its jurisdiction for the extension of patents; he framed the rules which regulated the proceedings, and his old love of mechanical inventions made him an invariable member of the Board when a patent case was in the paper.

[1] The facts are given in a letter from Lord Shaftesbury to Lady Lyndhurst, dated July 26, 1871, and printed by Sir Theodore Martin, 521. They dispose sufficiently of a passage in one of Campbell's letters, May 26, 1845 (ii. 192). 'To prepare you for the following jest I must tell you that last session Lyndhurst carried a job through Parliament, whereby he appointed his two secretaries, very foolish fellows, Commissioners of Lunatics.' The jest itself is ultra Caledonian, worthy of Tammas and the Auld Lichts, and we can understand that Lyndhurst 'smiled good-humouredly.'

denouncing what he regarded as a conspiracy most formidable, most dangerous to the State, and most pregnant with mischief. He defended the action of Sugden in vigorous terms, declaring that if he himself were Chancellor of Ireland he should have felt it his duty to follow exactly the same course. And he spoke in such warm and appreciative language of his colleague across St. George's Channel as to evoke a grateful letter [1] from one who was not peculiarly susceptible to the tender emotions.

Suddenly came the bolt from the blue. The August rains of 1845 had rotted the potatoes in Ireland, and incidentally had washed away the English corn laws. There was a dire failure in the wheat crop; on November 22 Lord John Russell in his Edinburgh letter declared for free trade in corn, and the Premier, who was already at heart a convert, took his colleagues into his confidence. The sequel is well known, how the Cabinet resigned, how Lord John's efforts to form an administration were thwarted at the eleventh hour by Earl Grey's distrust of Palmerston, and how the Peel Cabinet, minus Lord Stanley, resumed office, pledged to the abolition of all restrictions on the importation of corn. On June 26, 1846, the coalition between Whigs, Irish Repealers, and the 'men of metal and large-acred squires' left Sir Robert in a minority of seventy-eight. On the 29th the Conservative Government was at an end.

Lyndhurst laid down the Seals without a sigh; he was well aware that this was his last taste of the sweets of power, and wealth and patronage, but he had now 'passed the chair' for a third time, and the burden of office was pressing heavily upon him. He was over seventy-four. His sight was failing, he had suffered from a severe illness in the previous year, and he had already told his leader that his services could not be reckoned upon for another Session.[2] He took with him

[1] Quoted by Martin, 405.

[2] Martin, 409.

into private life the affection and esteem of his colleagues without a single exception. His activity in the furtherance of the Government Bills in the Lords, and the prominent part he had taken in the purification and amendment of the Statute Book, had contributed largely to the reputation for businesslike efficiency and workmanship in which the Peel Ministry presented so striking a contrast to their predecessors in office.

CHAPTER VII

THE LATTER DAYS OF LORD LYNDHURST

1846–1863

BEFORE finally relinquishing the field of party politics Lord Lyndhurst had to sustain a bitter personal attack, the motive of which still remains mysterious. He had seen with profound regret the break-up of the Conservative party, and was resolved to do something towards healing the schism before it became irreparable. For the moment the quarrel between the two sections was largely personal, and after the events of the past few months there was small hope of bringing Peel into harmony with the Protectionist leaders. But Peel, when approached by Lyndhurst, disclaimed all intention of seeking to regain office, and left an absolutely free hand to his former colleagues and supporters. The Duke of Wellington was next appealed to; he expressed himself anxious for a reconciliation, but declared that his position as Commander-in-Chief was inconsistent with a share in party negotiations. Lyndhurst then turned to the leader of the protectionists in the House of Lords, Lord Stanley; but the interview between them was devoid of practical result, and, as Lord Stanley was leaving London, the would-be mediator sent a message to Lord George Bentinck, who was at the head of the irreconcilables in the Commons, and with whom, strangely enough, he is said to have been personally unacquainted.

Lord George received the olive branch in uncompromising fashion; he abruptly declined to enter into any negotiations with Lord Lyndhurst, and simply re-

ferred him back to Lord Stanley, with whom he was 'in cordial co-operation.' It was clear that very little blessing was likely to be the lot of the peacemaker. In Lord Lyndhurst's own words, he found so much bitterness of feeling and personal hostility that he abandoned the task and took no further steps. Whether Lord George consulted his indefatigable lieutenant, Mr. Disraeli, does not appear. The latter had every reason at this juncture for disliking any reconciliation with the Peelites, but it is certain that he was taken quite unawares by the subsequent developments.

These pourparlers had come to an end on July 10. On August 18, without a word of notice or a demand for preliminary enquiry, Lord George suddenly denounced Lyndhurst in the House of Commons for grossly abusing his patronage, legal and ecclesiastical, by the perpetration of a succession of nefarious jobs. The details were complicated, but the ex-Chancellor was able to produce a complete and crushing answer.[1] How far Lord George Bentinck was actuated by personal animosity towards Lyndhurst, and how far by dislike of the late Administration generally—the members of which he strove impartially to implicate in the scandal, it is hard to tell, but the former had to bear the main brunt of his ferocity. 'The imputations upon Lord Lyndhurst with which he disgraced himself in the summer of 1846 seem to show a disordered mind,' writes Mr. Herbert Paul;[2] and Disraeli lost not a moment in dissociating himself from the attack and in declaring that 'no one intimately acquainted with that noble and learned Lord could suppose him influenced by selfish purposes.'[3]

Lord George had cause to rue the hour when he brought down on his shoulders the heavy hand of Lord Lyndhurst. After explaining the nature of the mare's nest upon which his opponent had stumbled, he proceeded to assume the offensive:

[1] See Martin's *Lyndhurst*, 422–424.

[2] *History of Modern England*, i. 34. [3] Hansard, lxxxviii. 870.

Perhaps the noble Lord thinks that everything is fair in party politics, that to blacken and traduce the character of political opponents by any means, however base or foul, is perfectly justifiable. The noble Lord may, perhaps, have acted upon that principle, or perhaps from his early associations and his early habits he may have been led to form so low an opinion of the principles on which mankind act as to suppose that every man in his transactions of life must be directed by some base, selfish, sordid motives. I cannot ascribe it to any other principle but one of those to which I have referred.[1]

Lord George replied on August 21 from his place in the House of Commons, and then for the first time related the negotiations of the previous July. His version of them was confused and inaccurate, and was contradicted on almost every point by Lyndhurst on the first opportunity. It is difficult to trace any logical connection between the two incidents, or to believe that the assault upon the Chancellor's disposal of his patronage was inspired by resentment at his efforts for party reunion ; but such nevertheless was the general impression.

Lyndhurst's career as an active political partisan was now over, though during the seventeen years for which his life was prolonged he never ceased to follow closely the course of public events at home and abroad. The shock which had broken the Conservative party into fragments was a source of mortification to him, which the helplessness of their successors in office did little to allay. But for the moment he was suffering from an affection of the eye, which threatened him with blindness, and he turned for occupation to his gardens and his Sabine Farm at Turville Park, in Oxfordshire, which he had rented soon after his second marriage. There he

[1] This seems an echo of the language used by Sir Alexander Cockburn as counsel in the ' Running Rein ' case tried in 1844, in which he accused Lord George Bentinck of being party, attorney, policeman, and of having tampered with the witnesses, clothed, fed, and paid them. The best racing opinion entirely acquits Lord George Bentinck of any impropriety of motive or conduct in the exposure of that famous fraud.

flung himself into the mysteries of cattle-feeding and manuring, though it is not recorded whether he was a convert to James Pigg's famous aphorism, 'Sink guano, muck's the man.' Indeed, he is said[1] to have been more curious in experiments than fortunate in raising crops. When too lame and infirm to superintend these experiments in person, he gave up the lease in 1855.

In London he gathered round him the society which he had ever loved, and, while his growing infirmities debarred him from mixing with his old freedom in that fashionable world, the cultivation of which had been his foible, his hospitality was ample as of old, and his genial playfulness and varied flow of conversation preserved their traditional charm. At a later date, when his eyesight was restored, he was able to indulge himself in a more varied course of reading than his busy public life had hitherto allowed,[2] and to post himself in current literature; nor were his favourite mathematical studies forgotten. Like the late Lord Salisbury, he retained to the end of his days an interest in experimental chemistry, and he followed closely the development of the telescope as applied to astronomical science. The house in George Street was a rallying-ground for the veterans of the legal and political arena.[3] Most constant among the visitors was Lord Brougham, who seldom failed to cheer the afternoon with his flamboyant gossip; and woe betide anyone who dared to depreciate his amazing qualities in the presence of his old rival. 'What is the House of Lords without Brougham?' Lyndhurst would say. 'Brougham *is* the House of Lords.' They have been accused, indeed, of 'romping' in that august assembly, and there is a story which an eminent Lord

[1] Martin, 510.

[2] 'In middle life he read little; in a divorce debate he crammed St. Augustine to confute Samuel Oxon, and regaled the House of Lords with an indecorous story culled from those voluminous writings' (*Edinburgh Review*, cxxix. 570).

[3] 'It was well known that as he never dropped an old friend, whatever his circumstances or station in life, so he never lost one' (Martin, 431).

Chief Justice used to tell which certainly lends some colour to the accusation. Lord Lyndhurst was the father of three daughters—Mrs. Selwin, whose husband afterwards became Sir Henry Selwin-Ibbetson, Mrs. Beckett, and Lady Du Cane—but no son had survived infancy, and it was a matter of deep regret to him that the honours of his name and title would cease with their founder. One day Lord Brougham presented, 'as was his custom of an afternoon,' with all due solemnity, a Bill at the table of the House. 'This, my lords,' he said, in a voice only intended for the occupant of the Woolsack, 'is a measure intended to enable the keeper of her Majesty's conscience to beget an heir male.' 'You be d——d,' was the *sotto voce* response.

In the winter of 1846 Lord Stanley had written to beg for his political co-operation. Lyndhurst promised to be up at the ensuing meeting of Parliament, but his increasing blindness, and the extreme uncertainty whether the operation of couching, for which the cataract in his eye was not yet ripe, would ever restore his sight, presented an apparently impassable obstacle to his participation in debate. Suddenly, on June 19, 1849, he reappeared in the House of Lords, and broke his long silence. The Canadian Legislature had recently passed an Act by which compensation was granted to those who had suffered loss from the efforts employed in the suppression of the rebellion in 1837–39. Brougham had given notice of a motion to suspend the Royal assent on the ground that the Act would apply, and was intended to apply, to the rebels as well as to the loyal, to the unjust as well as to the just. It was by no means clear that this would be the effect of the Act, and to modern notions it would be the height of impolicy to interfere in such a matter with a self-governing colony. But our Colonial policy in the 'forties and 'fifties was still without form and void, and recent South African experience will suggest the temptation which such a proposal might present. It had roused Lord Lyndhurst to indignation and

alarm, and for an hour he held the Peers with a speech which showed that physical infirmity had not dimmed his intellect nor abated the force of his 'concise and massive argument.' The words in which he intimated that it might be the last time on which he should occupy the attention of the House sent something like a pang through the crowded benches.

> Quantum mutatus ab illo
> Hectore qui redit exuvias indutus Achilli,
> Vel Danaum Phrygios jaculatus puppibus ignes.

For his sins Lord Campbell was put up to answer him, which task he fulfilled, as he confesses, 'with considerable intemperance and in a tone which might have been very successful in the House of Commons, but was unsuited to the "ears polite" of their lordships.'[1] Campbell had, indeed, mistaken the nature of his audience; and Lord Stanley, as the culprit admits, 'handled him unmercifully.' Amongst other things he had raked up the old cry of 'aliens in blood, language, and religion.'

I should have thought, said Lord Stanley, that my noble and learned friend's high position and long experience, his high character, his eminent and distinguished abilities, would have secured him, in the honoured decline of his years, from any such unworthy taunts as the noble and learned Lord has not thought it beneath him, on such an occasion, to address to such a man. If the noble and learned Lord listened with pain to the statement of my noble and learned friend, sure I am that there is no friend of the noble and learned Lord who must not have listened with deeper pain to what he has addressed to the House.

It was to be regretted that Campbell should have chosen a fresh opportunity for making himself offensive to Lyndhurst. They had gradually drifted back into the old good-humoured relations which had begun in Tidd's debating society, and had caused 'Jack Campbell' to count on a silk gown from his friendship with

[1] *Life of Lyndhurst*, 170.

Copley.[1] Shortly after the former joined Lord John Russell's Cabinet, in 1846, as Chancellor of the Duchy of Lancaster, he had given a 'love feast' at Stratheden House to meet the members of the Council of the Duchy.[2]

Whig and Tory, Protectionist and Free Trader, occupant of office and expectant of office, all drank wine with each other, and, instead of politics being banished, the doctrines and faults of all parties were freely made the subject of ridiculous comment.

Both Lyndhurst and Brougham were there, with Melbourne, and Lord John, and Sir James Graham, and Lord Clarendon, and Lord Lincoln,[3] and many others.

We sat at table till near eleven. As Lyndhurst was getting into his carriage he was overheard to say to Lord Brougham, 'I wish we had such a council as this once a month.'

And it was at this dinner that Brougham gave vent to the famous *mot*, which survives in many versions :

He related a supposed speech of Sir Charles Wetherell complaining that death is now attended with a fresh terror from Campbell writing the life of the deceased as soon as the breath was out of the body.[4]

Lyndhurst, however, was in the habit of treating Campbell with a half-contemptuous toleration, which was not always apparent to its object. Within little more than a twelvemonth after the Canada compensation

[1] *Supra*, 57.

[2] *Life of Lord Campbell*, ii. 219 ; Campbell's *Life of Lyndhurst*, 167.

[3] The Crimean Duke of Newcastle.

[4] Wetherell had died the previous year of injuries received in a carriage accident. Brougham, I believe, actually made the speech in Sir Charles's character, describing his experiences in the shades. By a curious blunder he has himself attributed this imaginary saying of Wetherell's to November 1835, ten years before the publication of the first series of the *Lives of the Chancellors* (*Life of Lord Brougham*, iii. 435). By a still stranger oversight Sir Theodore Martin in his first edition quoted the passage without comment (518).

speech the combatants were publicly reconciled at a 'very jolly' dinner given by Mr. Justice Patteson to celebrate the twenty-first year of his judgeship. Campbell, now Lord Chief Justice, took occasion to pay a somewhat clumsy compliment to Lyndhurst on the excellence of his judicial appointments. In reply,

He said he had some thoughts of dying a Whig that I might deal mercifully with him; and, asking me to drink wine with him, he declared that all enmities between us down to that moment were to be considered as buried and forgotten in the champagne. He has recovered his sight, and though he touches eighty is as brisk as a bee.[1]

The cataract had been successfully removed in the preceding June. Walking one day on the sea-front at Brighton he met Mr. Dod, a well-known member of the 'Times' staff, whose peculiar province was the obituary notices.

Ah, Dod, he said, I dare say you've got *my* life stowed away in one of your pigeon-holes, eh! But I don't intend to die yet. I'll see you out at any rate, eh!

which he did by a good ten years. The Session of 1851 saw him back in the House of Lords, more vigorous in body, and possibly also in mind, than when he resigned the Seals in 1846. For many years to come he took a constant and a leading part in debate, and many of the speeches delivered by the octogenarian still rank among the masterpieces of parliamentary eloquence.

Lyndhurst now classed himself among the followers of Lord Derby. He had spoken earnestly in 1849 against the repeal of the Navigation laws, and he stood aloof from the majority of his old colleagues, who, as 'Peelites,' were drifting far from their Conservative moorings.[2]

[1] *Life of Campbell*, ii. 284.

[2] Sir Robert himself had died on July 2, 1850.

'And broken are his merry, merry men,
That goodly companie.
There's some have ta'en the northern road
With Jem of Netherbee.

They had accepted Free Trade without any mental reservation, while Lyndhurst had only supported the Act for the abolition of the Corn Laws out of loyalty to the Cabinet and the Queen.

You can't have a worse opinion of the Bill than I have, he is reported as saying to a protectionist Peer, but it was recommended from the Throne, it has passed the Commons by a large majority, and we must all vote for it.[1]

So valuable was his support to the Opposition that when, in February 1852, Lord Derby was called upon to form his first administration, he offered his former Chancellor first the Presidency of the Council and then the Privy Seal, and finally pressed upon him a seat in the Cabinet without an office but with an earldom.[2] For the latter distinction Lyndhurst felt he had not the requisite means, even had his ambition lain in that direction; and we may fairly credit him with the wish to retain perfect independence of speech and action, an independence which, at the time of the Crimean war, put an end for the time being to his co-operation with the Conservatives.

Moreover, cataract had appeared in the other eye, and it was not until July 1852 that a second successful operation restored him to his books and to the placid enjoyment of his country life. It was this recurrent infirmity which had made him decline all participation in the judicial business of the House of Lords. In August

'The best and bravest of the band
With Derby Ned are gone,
But Earlie Grey and Charlie Wood
They stayed with Little John.'

Sir Theodore Martin, who with Professor Aytoun shares the authorship of this Bon Gaultier Ballad, has accumulated evidence more than sufficient to rebut Lord Campbell's constant allegations of an estrangement between Sir Robert and Lyndhurst; the same charge with regard to the Peelites generally is equally devoid of foundation.

[1] The saying rests only on Campbell's authority (*Life of Lyndhurst*, 161).

[2] Martin, 445, 446.

1853, however, he emerged to form one of the majority which decided that the famous will of the seventh Earl of Bridgewater was void, as being against public policy.[1] And now a fresh affliction was laid upon him. 'You have heard, seen, and with your usual perspicacity observed much,' he wrote to Campbell, after the Long Vacation of 1854 :

> Pour a little of the overflowings upon a poor wretch confined by the gout in both feet, unable to move. As the mountain cannot go to Mahomet, let the Prophet kindly come to the mountain. From three to five o'clock every day it is in a tolerable state of tranquillity.[2]

The position occupied by Lord Lyndhurst in this, the Indian summer of his days, has scarcely a parallel. In the House of Lords the mantle of the Duke of Wellington seemed to have descended upon him. His intellect, which, to the end, was disciplined with scrupulous severity, showed not the smallest trace of decay. So far from slackening his interest in politics, he took pleasure in the minute details of legislation. He was the sponsor of Bills of great importance, and even Campbell bears testimony to the admirable good sense, as well as to the acuteness and logical discrimination, which he displayed in the Select Committees, to which measures of law reform were referred. Contrary to all experience, his grasp and view seemed to broaden with the increase of years. Free from all party obligations, he was able to view men and measures on their merits alone. In the non-contentious sense of a much-abused term he had become a true 'Liberal,' and the man who had been Solicitor-General to Sidmouth and Castlereagh was found, after a lapse of nearly forty years, joining heartily in the mani-

[1] The Court held that the condition providing that his estates should not pass to his heir unless that heir should have previously acquired the title of Duke or Marquess tended to fetter the free agency of the party in the performance of the important duties incident to his position as a member of the peerage.

[2] *Life of Campbell*, ii. 327.

fold reforms of the mid-Victorian epoch. We can understand the perplexity with which Mr. Bagehot and his friends asked themselves 'what Lord Lyndhurst really was?'

But in one respect the old statesman was free from any reproach of inconsistency. He was ever jealous of England's honour, ever resolute that her place in the councils of Europe should suffer no disparagement.[1] In the early months of the Black Sea expedition, after we had declared war, but while the vigorous prosecution of hostilities in the East seemed still problematical, he launched a rousing philippic against Russia, and declared emphatically that in no event, except extreme necessity, ought we to make peace before we had destroyed the Russian fleet and laid prostrate the walls by which it was defended.

Lyndhurst possessed an extensive and accurate store of knowledge on the minutiæ of the Eastern question, and on the history of Austria and Prussia. Five years later, when in his eighty-eighth year, he took the opportunity, on July 5, 1859, of calling attention to the state of our national defences. It was the year of Solferino and Magenta, and its later months were marked by that extraordinary ebullition of Anglophobia on the part of the French colonels which evoked the Volunteer movement on this side of the Channel. In July there was no open sign of ill-feeling between the two nations, but Lyndhurst pointed out how vastly the invention of steam and the improvement of internal communications had increased the striking power of our old rival, as illustrated by her rapid mobilisation and triumphant campaign on the Mincio, and he proceeded to state to the House the measures which he deemed necessary for the safety of the country.

Into these details we need not follow him further

[1] We must admit that he stoutly opposed the Palmerston Government in their dispute over the lorcha 'Arrow,' and upheld Governor Yeh against Sir John Bowring; if he erred he erred in good company.

than to notice that he was emphatic in his insistence upon what is now known as the 'two-power standard,' recently raised by official acknowledgment to 'two powers and a margin.'

> If we wish to be in a state of security, if we wish to maintain our great interests, if we wish to maintain our honour, it is necessary that we should have a power measured by that of any two possible adversaries.

National insurance is seldom a popular topic in England, and it was never less so than in 1859, when Cobden and Bright were at their zenith. It took many a crisis of national peril, the extent of which is only faintly appreciated, to drive home the doctrine which Lord Lyndhurst preached that July evening six-and-forty years ago.

He returned to the charge again in the spring of 1860, and 'Punch' for May 12 contains a cartoon depicting him as Nestor, almost sightless, and seated amid the leading statesmen of both parties attired as Greek chieftains. He is pointing out to them a collection of battered hulks representing the British navy, and to the picture is appended an imaginary excerpt from Pope's Iliad, summarising his argument.

> Then Nestor rose, and all the Grecian Peers,
> Compelled to silence, bent their listening ears.
> 'Ye chiefs,' he cried, 'my years are eighty-eight,
> Therefore beseems ye let my words have weight.
> Time was I needed not such grace entreat,
> I made men mind me on my legs or seat.
> Oh, had I now the vigour once I owned,
> When fierce in arms I stood, though silver-toned,
> And dauntless Melbourne's stoutest battle tore
> And dropped O'Connell prostrate on the floor.
> . . . . . .
> Time was, but still my intellect is clear,
> And for my country's sake I bid you hear.'
> 'Thou fine old man,' the generous Punchus said,
> 'Whoever interrupts, I'll break his head.'

'Then listen, chieftains,' aged Nestor cried,
'And weigh my counsel well ere you decide.
Behold yon ships, your navy there behold,
And say, my friends, is Greece not overbold?
. . . . . .
'Tis peace, of course, or at the least a truce,
Who doubts its lasting nature gets abuse,
And huckster's doctrine, well I know, pretends
Exchange of goods must ever keep men friends.
But, Lords of Greece, your ships are still your guards,
And sudden warfare's always on the cards;
Therefore I urge you, get your reckoning done,
Be sure of every man and every gun.
Each new and old device of arms employ,
Repose no faith upon the faith of Troy.
This is the sentence from old Nestor's lips;
Chieftains, we want more men, we want more ships.'

The last speech which Lord Lyndhurst delivered in Parliament was on May 7, 1861, in support of Lord Kingsdown's Bill giving validity to wills of personal estate whether made within or beyond the domicile of the testator, provided that they were executed in accordance with the law of the country in which he was actually living. There was no sign of mental failure, but the physical weakness was sadly evident. In the previous year, when he delivered a great constitutional argument on the right of the Lords to throw out the Bill for the abolition of the Paper Duties, he had had to be assisted to his seat, and it was now noticed that he only raised and kept himself on his feet with difficulty and pain.

But let us take leave of Lyndhurst as an orator with a brief reference to two of his most famous speeches, both delivered when he was well past eighty, but before the hand of visible decay was laid upon him. The first of these was over the attempted creation of Life Peers. From various causes, some of which are alluded to elsewhere in this volume,[1] the judicial work of the House of

[1] Vide *infra*, 367, 453.

Lords was causing much dissatisfaction, when in 1856 Palmerston resolved to call up a couple of eminent judges to sit for their lives only without remainder to their descendants or kin. It is an expedient which was finally adopted by the Judicature Act, and it has worked admirably; but Palmerston chose to consider that legislation was unnecessary, and that a simple exercise of the Royal Prerogative was all that was needed. The *corpus vile* for the experiment was Baron Parke, whose great professional qualifications had been observed by Lyndhurst when, thirty years earlier, in his first Chancellorship, he had raised him to the Bench.

But there was a strong feeling, within and without the ranks of the legal profession, that, in the famous words of Somers, 'the Crown hath no such prerogative.' Notice was given by Lord Derby that the new peer must not take his seat till the House had had an opportunity of considering the validity of the patent, a course which was rendered easier by the fact that Parke was confined to his bed by the gout. Lyndhurst was deputed by his brother law lords to head the Opposition, and he accepted the task with the eagerness of a boy entering on public life. On February 7, upon the motion to refer the patent to a Committee of Privileges, he made, to quote Campbell again,

> the most wonderful speech ever heard. It would have been admirable for a man of thirty-five, and for a man of eighty-four it was miraculous.

The motion was carried by thirty-three, and the proceedings of the committee were mainly conducted by Lyndhurst himself; at its close he moved a report adverse to the right of the grantee of the letters patent to sit and vote in Parliament. Throughout the whole proceedings he quoted without book the black-letter authorities, and Sir Theodore Martin [1] has recorded a most remarkable instance of his powers of memory as displayed in this second speech:

[1] *Life of Lord Lyndhurst*, 467.

He had been dealing with the case of grants of peerages for life, which had been made at various remote periods, all of which, according to his argument, obtained what validity they had from the fact that they were made with the express authority of Parliament. 'I need not,' he said, 'refer to all the cases, for I believe my noble and learned friend (Lord Chancellor Cranworth) will agree with me that these significant words are to be found in all the patents or charters creating peerages for life.' The Chancellor, on being thus appealed to, answered 'About half of them,' upon which Lord Lyndhurst rejoined, 'I will show that the whole of them are,' and without any note of any kind, he went through every case, pointing out the distinctive peculiarities of each with minute accuracy.

The upshot of the whole matter was the victory of the Opposition, the cancelling of the patent, and the issue of a new one in the ordinary form to Baron Parke as Lord Wensleydale, a process which, as the learned peer had no male issue, might have been adopted in the first instance as being practically a peerage for one life only.

In the following year the frightful extent of the circulation of obscene literature throughout the country, and the inadequate state of the law for its suppression, had come before the judicial notice of Lord Campbell. He accordingly introduced a Bill giving power to search for, carry away, and destroy indecent books, prints, &c. The object was deserving of all praise, and the measure, as finally amended, has been the means of largely hampering, if it has failed to stamp out, a most abominable traffic. But the machinery, as originally framed, was capable of gross abuses; it sanctioned domiciliary police visits on the vaguest suspicion, and it left to the police superintendents and police magistrates the determination of what was, and what was not, an improper publication. Intent upon destroying the garbage which had so horrified him on Circuit, Lord Campbell protested that the measure was meant to apply exclusively 'to works written for

the single purpose of corrupting the morals of youth, and of a nature calculated to shock the common feelings of decency in any well-regulated mind.' But the Bill contained no such limitation, and speaker after speaker pointed out that the terms were so wide, so extensive, so loose, so vague, that no publisher nor printseller would be safe, and that books to be found in every library and in many drawing-rooms would come under the same ban as the productions of Holywell Street.

After Brougham and Cranworth and Wensleydale had expressed their dislike and distrust of the Bill in its existing shape, Lyndhurst rose and moved that it be read three months hence. He drew in the most graphic terms a picture of the working of the Bill if it became law; he gave a mirth-provoking dialogue between a common informer and a print-seller; he reminded their lordships of the precise spot in the Louvre Gallery where ladies of culture and refinement sat and viewed the Jupiter and Antiope of Correggio; he enumerated the masterpieces of antiquity in sculpture and literature which would perish in a holocaust such as that which destroyed Don Quixote's romances of chivalry. He foretold the confiscation of the Restoration dramatists, of Dryden and Pope, of the French novelists from Crébillon down to Dumas fils and Paul de Kock, 'that bane of youth.' His exquisite command of language enabled him to skim round an extremely risky topic without using a single expression which could cause offence. The whole speech was a supreme illustration of banter and chaff, largely intended, it must be confessed, to shock the composure of Lord Campbell. No one, I venture to submit, should have any difficulty in solving Mr. Paul's dilemma whether 'this strange harangue' is to be regarded as 'a scandalous exhibition of senile depravity or the vivacious outburst of a temperament which years could not impair.' [1]

It was unfortunate, however, that Lyndhurst took the

[1] *A History of Modern England*, i. 83.

extreme course of moving the rejection of a well-intentioned Bill which was obviously susceptible of amendment. Acting on the advice of Lord Granville, the House read it a second time, but in the course of the debate Campbell's temper got the better of him; he was incensed at the prospective loss of a much-needed Act, and he could not be unconscious that Lyndhurst was poking fun at him. In answering the latter's speech, so far as the House would allow him, for he was promptly called to order, he applied to it

some words so offensive that they are not reported in Hansard. He uttered them also in a tone so low that, while others heard them, Lord Lyndhurst, being slightly deaf, did not do so. They were so discreditable that when Campbell sat down Lord Wensleydale told him he should inform Lord Lyndhurst of what he had said. Knowing this, Lord Campbell called at Lord Lyndhurst's house to apologise, but Lord Lyndhurst refused to see him,[1]

and it was not until the former had made public amends in the House of Lords that a reconciliation was effected.

It may seem ungracious to harp upon these 'rough passages of arms,' as Lord Campbell somewhat curiously terms them, and in ordinary circumstances they might well be left undisturbed. But their effect may be traced only too plainly in the pages of Campbell's posthumous volume; they are become part of the *res gestæ*, and they cannot be entirely passed over.[2] Happily the closing scenes present no repetition of these regrettable incidents. In June 1859 the final ambition of Campbell's life was gratified by his promotion to the Woolsack, a promotion which is said to have been due to a suggestion from Lyndhurst.[3] The day before he was sworn in Campbell dined with him to meet Brougham and Cranworth with

[1] Martin, 474.

[2] Lord Campbell's account of the debate in his *Life of Lord Lyndhurst* (201) is a most extraordinary illustration of the *suppressio veri*. In his published diary there is no reference to the scene; see ii. 350.

[3] Martin, 480.

Lords Wensleydale and Kingsdown, and a large party of legal notabilities. 'All were civil to me, and we were immediately in our old familiar rollicking mood.'[1] It was on this occasion that Lyndhurst applied to the guest of the evening the lines from 'Macbeth':

> Thou hast it now, King, Cawdor, Glamis, all
> As the weird women promised—

a quotation with which he was so well pleased that he afterwards repeated it in the House of Lords when defending the Chancellor's appointment of Mr. Justice Blackburne.[2]

Not long before Campbell's death Lyndhurst in his turn was present at a feast at Stratheden House, where once more the greatest lawyers of the day were assembled. He was too infirm to walk upstairs, but, says one of the party,

> I remember well that Lord Lyndhurst was unusually lively and agreeable. That which dwells in my memory is his leave-taking. He rose to leave the room before the rest of the party, but all the rest rose too, and there was something like a cheer from the others as he went out. I thought that the old man was fatigued and was retiring early, but it turned out he was going on to a party at Apsley House.[3]

It is melancholy to think that on this very evening there lay among Lord Campbell's papers the manuscript of that 'Life' which, in the words of Chief Baron Pollock,

> is written with the utmost possible malice and ill-will. It rakes together all the scandal and falsehood that was ever invented or written about Lord Lyndhurst, dishonestly publishing as true what is notoriously false, and insinuating by a sneer matters for which he well knew there was no pretence whatever.[4]

[1] *Life of Campbell*, ii. 372. [2] July 1, 1859, Hansard, cliv. 508.

[3] Editor's note to Campbell's *Life of Lyndhurst*, 211. Mr. Gladstone has said that the phrase he once heard Brougham use to Lyndhurst—'I would give you some of my walking power if you could give me some of your brains'—was the highest compliment he had ever known paid to one human being by another (Morley, i. 571).

[4] Martin, 520.

The end was not far off. Lord Lyndhurst had retained his vivacity and his physical powers to a period far beyond the allotted span. As late as 1855 he had revisited his beloved Paris, had entered into all the wonders of the French Exhibition, and had chidden his less enterprising friends for losing such an opportunity of enjoyment. His 'dignified and serene old age,' as Lord Granville calls it,[1] was made happy by the love and unremitting care of his wife, his daughters, and his sister, herself only a year or two younger. All who saw him during the years when his bodily strength was failing tell the same story.

I have sat an hour with Lyndhurst to-day, wrote Gladstone to his wife in November 1862. He is much *older* than when I saw him last, but still has pith and life in him as well as that astonishing freshness of mind which gives him a charm in its way quite unrivalled. He is very kind, and what is more, he showed, I think, a seriousness of tone which has been missed before.[2]

His old literary and scientific tastes clung to him to the last. He would discuss Shakespeare with Sir Henry Holland, and Homer with Mr. Gladstone; and his wonderful aptitude to grasp at once the details of a subject that to most others would require a long course of special study left a deep impression on so keen an observer as Mr. James Nasmyth.[3] And from him *humani nihil alienum*; he was able to read 'Tom Brown's School Days' with all the zest of a boy.

After a very short illness he passed painlessly away on the morning of October 12, 1863, in the ninety-second year of his age. His last words, uttered in answer to a tender enquiry, were, 'Happy? Yes, supremely happy.'[4]

[1] *Life of Lord Granville*, i. 485.
[2] Morley, *Life of Gladstone*, ii. 283. [3] Martin, 503. [4] *Ibid.* 513.

CHAPTER VIII

LIFE OF LORD BROUGHAM DOWN TO HIS ENTRY INTO PARLIAMENT

1778–1810

HENRY PETER BROUGHAM, afterwards first Baron Brougham and Vaux, was born at Lord Buchan's house, St. Andrew Square, Edinburgh, on September 19, 1778. We are assured by the antiquaries that as early as the reign of Edward the Confessor the family of de Burgham occupied a respectable position in Westmorland, and that the de Burgham of the day was confirmed in the tenure of his estates by 'William Conqueror.' From these de Burghams or de Brohams the Chancellor claimed to be descended; and he told Lord Campbell that the Duke of Norfolk was wont to say when he came into the north of England,

you talk of your Percys and Greys in this country, but the only true gentleman among you is Mr. Brougham of Brougham. The Howards have sprung up only recently, but the Broughams were at Brougham in the time of Antoninus.

Modern genealogists profess themselves unable to trace his pedigree beyond a certain Henry Brougham described in 1665 as of Scales Hall, Cumberland, whose eldest son John purchased in 1726 from a family named Bird a portion of the Manor of Brougham, comprising the mansion popularly known as the Bird's Nest, which in due time became Brougham Hall.[1] It stands some miles

[1] *Complete Peerage* by G. E. C., ii. 35. But see, on the other side, *Law Magazine*, liii. 40 *n.*

from the fine ruin of Brougham Castle, the home of the de Burghams and now belonging to Lord Hothfield.

John Brougham, known as 'the Commissioner' from the various stewardships or agencies which he held, left no children, and his Westmorland estate passed under the limitations of his will to his nephew Henry, the Chancellor's grandfather. Mr. Henry Brougham was a prosperous attorney, and acted as steward to the Dukes of Norfolk, then resident at Greystoke, which adds piquancy to 'Jockey of Norfolk's' compliment. His eldest son, also a Henry Brougham, had been engaged to a beautiful Westmorland girl, Mary Whelpdale by name, who died on the eve of their wedding day. The shock deprived him for the time of his reason, and he found himself unable to bear the associations of his home. He took up his residence at Edinburgh, and there married Miss Eleanor Syme, the daughter of a widowed minister of the Church of Scotland, and niece of Dr. Robertson, the historian of Charles V. The Chancellor was their eldest child, and Mrs. Henry Brougham has left a memorandum of his early days:[1]

Nothing to him was a labour, no task prescribed that was not performed long before the time expected . . . from mere infancy he showed a marked attention to everything he *saw*, and this before he could speak. Afterwards to everything he *heard*, and he had a memory the most retentive. He spoke distinctly, several words, when he was eight months, and could read when he was two years old; and the aptitude to learn continued progressive.

His earliest recorded utterance was due to a nasty tumble downstairs. 'Have you hurt your head?' enquired the anxious parent. 'Sure, ma'am, it was crackit before,' was the reply, being the invariable phrase of excuse of their servant, from whose hands no breakable article was safe.

[1] *Life and Times of Lord Brougham, written by himself*, i. 2; on the authority attached to this autobiographical fragment I have had something to say in the Preface.

Though an Etonian himself, Mr. Brougham preferred a Scotch education for his children, and Henry Peter entered the High School in September 1785; here he remained till 1791, reaching the position of Dux of the rector's class. The rector was Dr. Alexander Adam, a fine scholar and an ardent democrat in politics. His comments on contemporary events during the early days of the French Revolution were not without their effect upon the mental development of his pupil, who matriculated at Edinburgh University in October 1792, being just fourteen. Here for the next four years he pursued the regulation course of humanity and philosophy. An omnivorous reader, with a tenacious memory and almost superhuman powers of application, he amassed a store of miscellaneous learning, during this period, beyond the wildest imagination of schoolboy or undergraduate south of the Tweed. He had a wide and a fairly accurate knowledge of the Roman poets, orators, and historians. To use a phrase of Macaulay's, he had soaked himself in Cicero, large portions of whom, as well as of Virgil, he knew by heart. They were ever at the tip of his tongue; and he possessed the gift of terse and close translation from Latin into English:

> False honour charms and lying slander scares
> Whom but the false and guilty?

was his impromptu rendering in the House of Commons of

> Falsus honor juvat et mendax infamia terret
> Quem nisi mendacem et mendosum?

Edinburgh presented fewer opportunities for studying Greek, and though, after his own fashion, Brougham possessed a tolerable acquaintance with the masterpieces of that language, his want of grounding and of grammatical knowledge was exposed when, long afterwards, in a disastrous hour, he published a translation of the 'De Coronâ.'

It is a curious, if somewhat idle, speculation what

Brougham's future would have been had he trodden the customary English paths, which led from Eton and Westminster to Christ Church and Trinity. We can hardly imagine his independent and irregular, if not ill-regulated, disposition in the fetters of a public school, while the restraints and the licence of Oxford and Cambridge would have been equally perilous to him. But Brougham had a most precocious bent for mathematics and the exact sciences. As a High School boy of twelve he had been detected on one of the Edinburgh bridges with a quarto volume of the French edition of Laplace under his arm. And at an age when Copley and Pollock and Alderson were just beginning to prepare for the Tripos,[1] 'Henry Brougham, jun., Esq.' was communicating his 'Experiments and Observations on the Inflexion, Reflexion, and Colours of Light'[2] to the Royal Society of London, followed up, two years later, by a paper on 'General Theorems, chiefly Porisms, in the Higher Geometry.' It is just possible that Cambridge might have cast her spell over him and deflected an embryo Chancellor to a humbler plane.

One undeniable advantage accrued from his Scotch education: he was plunged at an early age not only into the best society of the Northern capital, but into the companionship of a knot of contemporaries whose celebrity was destined to spread far beyond the confines of Edinburgh. On November 21 Henry Brougham and Francis Horner were elected to the famous 'Speculative Society.'

Men older than ourselves were among its active members; but of our standing were Jeffrey (though a little older), Murray and Moncrieff, Miller, Loch, Adam, Cockburn, Jardine, and there were several students who had come from England. Of these the most distinguished were Lord Henry Petty

[1] Copley, as we have seen, was Second Wrangler in 1794; Pollock was Senior Wrangler in 1806, Alderson in 1809.

[2] *Philosophical Transactions of the Royal Society*, lxxxvi. part 1, 227; lxxxviii. 378.

(afterwards Lord Lansdowne) and Charles Kinnaird, Lord Webb Seymour, and, somewhat later, the two Grants, Glenelg and his brother Sir Robert.[1]

Not satisfied with the weekly meetings of the Speculative, he founded, for the benefit of practically the same circle of young men, the Academy of Physics, the scope of which was wider than its title would imply; and Brougham and Horner both laid before it papers on law reform, a subject which was to give so great an impetus to the future career of both of them.[2]

Even Scotch students are not without their hours of recreation, and the long summer holiday was generally spent by Brougham in walking tours through the Highlands, 'wild scrambling excursions, but abounding in mirth and jollity, for we were young, active, and overburdened with high spirits.' These high spirits found more questionable vent when cabin'd within the walls of Auld Reekie. The 'high jinks' at the Apollo Club or at Johnny Dow's oyster bar are more suggestive of the pages of Lever and Albert Smith than of the decorous festivities of Mr. Pleydell. The wrenching off of brass knockers was the acme of humour and prowess, and the proceedings after a farewell banquet to the grave and sedate Francis Horner were marked by the appearance of the City Guard and by a 'run' of exceptional severity.

Early dinner followed by deep potations was then the rule in Edinburgh society, and it was incumbent upon some gentleman to give a toast with every round of the bottle, until the toast of 'good afternoon' broke up the party in the same way that 'prosperity to the Circuit' is still the signal for retiring when his Majesty's judges entertain the Bar. A new piece called 'The Jolly Toper' by the unfortunate Robert Heron was produced at the Edinburgh Theatre: it staggered through four acts under increasing marks of disapprobation till the curtain finally rose upon a party seated round a table with bottles and glasses

[1] *Life of Brougham*, i. 86. [2] *Law Magazine*, lii. 9.

before them. The gentleman in the chair rose solemnly from his seat and said, 'All charged, give us a toast.' An unexpected answer came from the pit. The lanky figure of Henry Brougham was seen drawn up to its full height, and in courteous tones he responded, 'I humbly propose "Good afternoon."' The cry was taken up from all parts of the house, and the hint was acted on by the audience, leaving the 'Jolly Topers' disconsolate and the piece damned.[1]

By 1795 Brougham had exhausted the ordinary university curriculum, humanities, mathematics, logic, physics, rhetoric, ethics. In those days there were no examinations or disputations, and degrees were only granted in the Faculty of Medicine. He was seventeen, and it had become necessary to choose a profession. He elected for the Scottish Bar, for which an attendance of at least two years at the lectures of the Professor of Civil Law was a necessary qualification. He applied himself accordingly to the study of the Pandects and the Institutional writers, 'gaining a considerable insight into both Roman and Feudal jurisprudence;' and he

> so far legalised his mind that ever after, *pro re nata*, he could understand, get up, and plausibly discuss any question of law which came in his way, however abstruse and however strange to him.[2]

Attendance in the Parliament House gave the aspirant an insight into the practice of advocacy, and provided him with models of oratory. Scarcely less valuable in this latter respect were the May session of the general Assembly and the sermons of the great Presbyterian divines. The very tones and gestures of the preachers, masters of declamation and of pathos, remained stored in his memory. From one whose eloquence was especially remarkable in pathetic passages[3] he learnt a use of the voice which he often employed in after life, namely,

[1] *Life of Brougham*, i. 91. [2] Campbell, *Life of Brougham*, 233.
[3] *Life of Brougham*, i. 83.

dropping it at particular passages to command attention or enforce silence. It was the use of this expedient that gave him his power of whispering through the House of Commons to the very door and wall.

He was admitted Advocate on June 10, 1800, after satisfying the examiners in Scots law and being found sufficiently qualified in a public examination on 'Tit. v. Lib. 3 Digest. De negotiis gestis,'[1] an ordeal which had lessened in severity since the days of Darsie Latimer and Alan Fairford. During these years of probation Brougham had continued to attend the lectures of the University professors, both in mathematics and the experimental sciences. Playfair had been his early instructor, and to him, but more especially to Adam Black, he never ceased to refer in terms of the highest gratitude.

In the summer of 1799 an opportunity for foreign travel presented itself, of which he gladly took advantage. Among his Edinburgh friends was a wealthy and enterprising Irishman named Henry, who had chartered a yacht for an expedition to the Western Isles and to Iceland. He was invited to join, together with Charles Stuart, a grandson of Lord Bute and afterwards Lord Stuart de Rothesay, whom Brougham describes as the most intimate friend he ever possessed.[2] The sayings and doings of the party are preserved in a series of letters from Brougham to his kinsman, Lord Robertson. They are chiefly remarkable as a record of what young Scotchmen of that generation could accomplish with the bottle. On one occasion they disposed of a dozen of port between them, and then, his companions being 'stowed away,' Brougham finished another bottle and a half with an old exciseman. The next morning he found all Stornoway in full tongue at the feat, but he 'went to the moors,

[1] Campbell, *Life of Brougham*, 236.

[2] Stuart became in later years ambassador at Paris, and father of Lady Canning and the Marchioness of Waterford, the Two Noble Lives portrayed by Augustus Hare. It is a curious relic of the age that the starting of the expedition was delayed for some little period by the difficulty of obtaining from the Admiralty a protection against pressing.

walked it off, and killed a brace of hares at one discharge.' Claret, champagne, hermitage and hock were the daily beverage of these hardy Norsemen, and one is not surprised to read that 'at night we are uniformly and universally *dead* (drunk).'[1] Echoes of these revels reached Edinburgh, and gave rise to a caricature in which Brougham is portrayed as bursting at midnight into the bedroom of an unfortunate Stornoway innkeeper, shooting at a cat with loaded pistols, and pretending that he was a messenger from the infernal regions.[2]

After a cruise conducted on such principles Brougham was well advised in declaring the season too far advanced for the voyage to Iceland, and, leaving the remainder of the party on the west coast of Scotland, he and his friend Stuart decided to spend the winter in Denmark and Sweden, where they remained from September till the beginning of the following year. Brougham has published the journal of his Scandinavian tour, which can still be read with interest. And there is a curious passage in it which illuminates Miss Coleridge's romance of 'The King with Two Faces.' Only a few years had elapsed since Gustavus III.[3] had fallen beneath the bullets of Ankerström and his confederates when Brougham saw in the studio of Sergel, the sculptor, an unfinished bronze statue of the murdered monarch.

> We could not help remarking the extreme dissimilarity of the two sides of his face. The left has more slope and less angle than the right in the cheek; and the left brow falls away flat and hollow, the skull becoming round and large on the opposite side, to which it looks twisted. . . . Sergel said that the twist in the face was rather greater in the original.[4]

The Scotch Bar was in those days a close borough in which the sons and relatives of the Fifteen possessed, if not a monopoly, at any rate preferential claims. Though Brougham was 'weel kenn'd' in the judicial

[1] *Life of Brougham*, i. 109. [2] Campbell, *Life of Brougham*, 235.
[3] Assassinated March 10, 1792. [4] *Life of Brougham*, i. 163.

and legal circles of Edinburgh, and though his reputation for ability and readiness was equal to that of any of his contemporaries, briefs did not come his way. Mathematical treatises were no passport to the favour of the Writers to the Signet, and his harum-scarum pranks were even less of a qualification. It was possible, however, by joining a circuit and acting gratuitously for prisoners too poor to fee counsel, to mount the first rung of the professional ladder. Brougham accordingly devoted himself to the Southern Circuit, whereof the judge of assize was Lord Eskgrove, a dignitary more distinguished by age than wisdom, whom he nearly tormented to death by his eccentricities.[1] It does not appear that he gave the Circuit more than one trial, or indeed that he made any serious bid for practice in the Edinburgh Parliament House. His self-reliant ambition was calling him southward to tread in the steps of Wedderburn and Erskine. He was already fired with the prospect of a political career, and, as a preliminary step, he entered himself at Lincoln's Inn on November 14, 1803.

Before leaving Edinburgh, however, he had published his 'Inquiry into the Colonial Policy of the European Powers,' a work in which Mr. Gladstone could find only 'eccentricity, paradox, fast and loose reasoning,' and which was undeniably marred by diffusiveness and by imperfect arrangement. But it bore traces none the less of great information, vigorous thought, and independence of judgment. As only too often, Brougham had striven to accomplish in a few months what other men would have made the task of a lifetime, and the author's hopes of success were only very moderately realised.[2]

[1] See Campbell, *Life of Brougham*, 241 *et seq.*

[2] Among contemporary notices is the remark of William Wilberforce that it is 'manifestly the *launcher*, and a capital one too, of a shrewd man of the world.' Creevey, on the other hand, considered (i. 30) that Brougham had 'got a sort of philosophical cant about him, and a way of putting obscure sentences together which seems to fools to contain deep meaning, especially as an air of consummate petulance and confidence runs through the whole.'

Of even date with his 'Colonial Policy' was his connection with the Edinburgh Review, of which in common with Jeffrey and Sydney Smith he claims to have been[1] a joint founder. It would be impossible to imagine a field better adapted for the versatility of Brougham's genius. It has been said of him that, if he were shut up in a tower without a single book for a period of six months, he would have produced out of his own memory and stores of reading a very tolerable encyclopædia defaced by a scattering of ludicrous blunders. His contributions to the Edinburgh may have lacked the force and the brilliancy of Jeffrey and Sydney Smith, the solid qualities of Mackintosh and Horner, and they were never pounced upon by the public as, at a later epoch in the history of the Review, were the incomparable essays of Macaulay. But as a general-utility man, prepared to take any subject at a moment's notice, equally ready to smash a professor and gibbet a poet, he was without rival for either vigour or variety.

He had seven articles in the first number, and five in the second. The story that on one occasion, in return for an advance of a thousand pounds, he wrote an entire number within a period of six weeks may be dismissed as apocryphal.[2] Brougham himself tells us that in the first twenty numbers he wrote eighty articles as against seventy-five by Jeffrey and twenty-three by Sydney Smith. 'The surest and most voluminous among the sons of men' was Jeffrey's eulogy upon him. Unhappily there came a time when he was to exercise 'an intolerable dictation' over the Review, and when its pages were to become one of the many instruments by which adulation and puffery were served out to him without shame or stint.

[1] But see Lord Holland, *Further Memoirs of the Whig Party*, 1807–21, 387.

[2] Campbell professes to give the titles of some of the articles in this 'special Brougham number.' They include, 'The New Mode of Performing the Operation of Lithotomy,' and 'The Music of the Chinese,' topics with which the names of Lord John Russell and Dr. Whewell are more usually associated.

I always knew, wrote Macaulay to Macvey Napier, Jeffrey's successor in the editorial chair, that in every association, literary or political, Brougham would wish to domineer. I knew also that no editor of the Edinburgh Review could, without risking the ruin of the publication, resolutely oppose the demands of a man so able and powerful. . . . The present constitution of the Edinburgh Review is this, that, at whatever time Brougham may be pleased to notify his intention of writing on any subject, all previous engagements are to be considered as annulled by that notification.[1]

In these earlier days, as appears from the list of his articles furnished by Brougham himself, he wrote largely, but by no means exclusively, upon scientific subjects. His reputation as a mathematician, among his colleagues, was unbounded; and when the unfortunate Dr. Young, whose undulatory theory of light he had covered with ridicule, attempted a retaliatory pamphlet, it fell stillborn from the Press. To Romilly it seemed that the contributors to the Edinburgh prided themselves principally upon their severity, and that the sole object in reviewing certain works was to display their powers in this particular line of criticism. And Sydney Smith recalls gleefully how on one occasion they 'got hold of a poor little vegetarian who had put out a silly little book,' and how Brougham and he sat one night over their review, 'looking whether there was a chink or a crevice through which we could drop one more drop of verjuice.'

One of his incursions into the realms of literary criticism had consequences beyond those produced by any single magazine article, before or since. The scathing attack on 'Hours of Idleness,' which is now generally attributed to him,[2] was the 'onlie begetter' of 'English Bards and Scotch Reviewers,' and drove Byron up the slopes of Parnassus like Io pursued by the gadfly.

[1] Sept. 16, 1830. *Life of Lord Macaulay*, i. 198.

[2] Brougham has denied and admitted the authorship with equal solemnity. Contrast Grant Duff, *Notes from a Diary*, 1897, ii. 189, with Whitwell Elwin, *Some Eighteenth Century Men of Letters*, i. 217.

Curiously enough the poet does not seem to have suspected the authorship, and his intense hatred for Brougham dates from a later period and was due to a totally different cause.[1] The only lines directed against him in the Satire,

> Beware lest blundering Brougham destroy the sale,
> Turn beef to bannocks, cauliflowers to kail,

are explained in a note by the noble author to refer to the famous Pedro de Cevallos article attacking Sir Arthur Wellesley and the conduct of the Peninsular war.[2] Lord Buchan kicked the offending number out of his house, the very mansion in which the Reviewer had been born.

Brougham finally quitted the Scotch capital in the autumn of 1804. But before settling down in London he made a tour through Holland, gathering a good deal of information on the Slave Trade, a subject in which he was then much engrossed.[3] From Holland he passed into Italy. The state of the Continent made travelling difficult for anyone, for a professed British subject impossible, so it was necessary for him to furnish himself with the passport and papers of an American citizen, and he found himself more than once quartered for a week at a time in the same house with several French officers. In January 1805 he settled definitely in London, eating his dinners at Lincoln's Inn Hall in term time and supporting himself mainly by his writings in the Review; though his patrimony was small and he did not begin to make an income at the Bar until he was past thirty, he does not appear to have suffered at any time from pecuniary embarrassment. His immediate object was a seat in Parliament, with which his friend Horner was provided in 1807, and he lost no time in making himself serviceable

[1] Brougham had warmly espoused Lady Byron's cause in the matter of the separation. In a letter to the poet dated February 18, 1817, Murray speaks of a certain B. as 'your incessant persecutor, the source of all affected public opinion concerning you' (*Poetical Works of Lord Byron*, edited by E. H. Coleridge, vi. 67 *n.*; *vide infra*, 274).

[2] *Edinburgh Review*, xxv. and *infra*, 202.

[3] See *Life of William Wilberforce*, v. 194.

to the leaders of the Whigs. Hitherto he had shown no particular bias in politics. He is said to have been indoctrinated with Toryism by his great-uncle, Dr. Robertson, and observers profess to detect traces of original sin in his work upon colonial policy. Years of close association with Jeffrey and Horner were not likely to have left many of the tares upstanding. Yet there is a curious letter from Wilberforce to Pitt,[1] in which he strongly recommends to him for diplomatic employment abroad

> the Mr. Brougham whom I formerly mentioned to you. He speaks French as well as English,[2] and several other languages. But the great thing is that he is a man of uncommon talents and address, and for his age, twenty-six, knowledge also; *and I told you of his being so long an advocate for your Government in Edinburgh.*

We are tempted to wonder who informed Mr. Wilberforce of this unwritten chapter in the life of an Edinburgh Reviewer, and whether it could have been Brougham himself.

Be this as it may, it was as a pronounced Reformer, if not a very firmly rooted Whig, that he began the battle of life on English soil. His fame as a brilliant and incisive writer had preceded him; he was speedily elected to Brooks's, and on the introduction of Mr. Allen was made free of Holland House, though his relations with that Whig fortress were always of a variable character. He also obtained the entrée into the more exclusive if less entertaining salon of Lady Spencer.[3] He had mixed freely in the best Scotch society, and the number of young Englishmen of rank who in those days were wont to finish their education at Edinburgh formed a link between the two capitals. Lord Campbell, whose acquaintance with him began a few years later, has drawn a sketch of Brougham at this epoch which is acknowledged by

[1] *Wilberforce Correspondence*, ii. 51. [2] But *vide infra*, 370.
[3] Le Marchant's *Life of Lord Spencer*, 21.

Hayward to be equally true and fair, and has received confirmation since it was written by the publication of Brougham's correspondence with the leaders of the Whig party:

By a natural instinct which taught him his own relative value he seemed, from his first introduction to men of the highest birth and the most distinguished position to feel himself on an entire equality with them, and without any approach to vulgarity or impertinence he treated them with the utmost familiarity. While he could address himself with much dexterity to the *amour-propre* of those with whom he conversed, he betrayed occasionally his power of sarcasm, and he was courted both on account of what was pleasant about him and what was formidable. As he advanced in consequence, he ruled more by fear than by love; but when envy and rivalry did not interfere his amiable qualities again shone out; he was almost always obliging and sometimes he was actually friendly. In spite of a secret distrust of him, which was generated in the minds of almost all who knew him by his occasional forgetfulness of promises and incorrectness in his statement of facts, he was rapidly rising and flying through the mouths of men.[1]

For the moment the course of politics seemed all in his favour. Pitt died on January 23, 1806, and after twenty-two years of exile a Whig Government was again in office. On the formation of Lord Grenville's Cabinet, Brougham, at the suggestion of Lord Holland, had written a useful pamphlet, 'The State of the Nation Considered,' and in the autumn of that year he was appointed secretary to a special mission to the Court of Lisbon, consisting of Lord St. Vincent, Lord Rosslyn,[2] and General Simcoe. In the summer of 1806 Bonaparte was massing troops upon the Spanish frontiers, and was planning in conjunction with Godoy the partition of Portugal. St. Vincent had instructions to offer support to the House of Braganza, and, if the Portuguese Govern-

[1] Campbell, *Life of Brougham*, 251.

[2] Nephew of the Chancellor, better known under his earlier title of Lord Loughborough.

ment should believe resistance to be impracticable, to co-operate in the removal of the fleet and the Royal family to the Brazils. Should the Court appear too undecided to adopt either of these resolutions, he had authority to seize Lisbon with the ships and naval stores and to bring away the members of the Blood Royal at all hazards.

The mission accomplished nothing, for the course of events in Prussia and in Spain caused a postponement and a radical modification of the Emperor's plans; but St. Vincent confided to Brougham the details of a daring *coup de main*, borrowed from Robertson's account of the seizure of Montezuma, by which the members of the Royal family were to be inveigled on board the flagship and escorted, *nolentes volentes*, away from the seat of Government.[1] Fortunately for the national credit the occasion did not arise, and Brougham was back in his chambers in the Albany early in September. He declares that he was never reimbursed the sums expended by him in secret service money, and that he was left considerably out of pocket by the mission. On the other hand, he learnt much that was interesting from his daily association with Lord St. Vincent, and he formed a lifelong friendship with the Earl of Rosslyn. He had tried unsuccessfully to be allowed to proceed to Madrid, and it is possible that his discouraging and disillusioning experiences may have helped to form the jaundiced views with which he always regarded our military operations in the Peninsula.

It is rumoured, wrote Jeffrey, that he was laid hold of by the Inquisition and singed with wax tapers on account of the Review.

A few months after his return, on March 24, 1807, the Ministry of All the Talents was dismissed, and a General Election followed. The Whigs were at first hopeful, but the tide of feeling in the country was soon

[1] *Life of Brougham*, i. 334.

perceived to be running against them, and the need was felt for some one to undertake the management of the Press and the distribution of electoral literature. This task, Lord Holland tells us,[1] was entrusted to Brougham,

> whose early connection with the Abolitionists had familiarised him with the means of circulating political papers and given him some weight with those best qualified to co-operate in such an undertaking. . . . With partial and scanty assistance from Mr. Allen, myself and two or three more, he, in the course of ten days, filled every bookseller's shop with pamphlets, most London newspapers and all the country ones without exception with paragraphs, and supplied a large portion of the boroughs throughout the kingdom with handbills adapted to the local interests of the candidates.

Brougham was evidently among the fathers of modern electioneering, and so late as 1831 and 1832 his hand retained its cunning; but in 1807 his efforts were unavailing. The result was fatal to any hopes which he may have cherished of further official employment, and he turned to the Bar as the only means of advancement. As a Scotch Advocate he was able to hold briefs at the Cockpit in Whitehall, before the Privy Council, and to argue Scotch appeals in the House of Lords, where he had already appeared on behalf of Lady Essex Ker in the Roxburghe peerage case. He now prepared to equip himself seriously for his profession, and entered as a pupil the chambers of Mr. Tindal, then a special pleader below the Bar, and afterwards Chief Justice of the Common Pleas. Of the mysteries of that art he took a hopeful view; and in May 1808[2] he writes that he was

> pleading as diligently as possible; indeed it naturally becomes easier and less disagreeable every day, and in a year or more, I doubt not, I shall know more about it than is requisite.

There spoke the true Brougham; but an anxious relative of the future Chancellor, who said interrogatively

[1] *Memoirs of the Whig Party*, ii. 225 *et seq.*
[2] *Life of Brougham*, i. 400.

to Tindal, 'I hope he is giving himself, soul and body, to his profession?' received for answer, 'I don't know anything about his soul, but his body is very seldom in my chambers.'

Meanwhile accident had placed before him a notable opening in the law, 'and,' he wrote to Lord Grey,

however odious that profession is (as God knows there are few things so hateful) I am quite clear that it would be utter madness in me to neglect so certain a prospect.[1]

A deputation of Liverpool and Manchester merchants had come up to join their London brethren in petitioning Parliament against the Orders in Council, and Brougham, who, as a member of the Scotch Bar, had right of audience before the Parliamentary Committee in either House, was retained on their behalf. The famous Orders in Council, promulgated by the Whigs in January 1807, and by their Tory successors in the November following, were a counterblast to the Berlin and Milan Decrees of Napoleon. Purposing, and with signal success, to strangle the last remnants of the seaborne commerce of France, while rendering the French *régime* odious and ruinous to the Continental vassals of the Emperor, they were almost equally disastrous and oppressive in their result upon British trade and shipping.[2] The merchants of our great ports and manufacturing towns were brought to the verge of despair by the wholesale cessation of business, and, incidentally, the train

[1] *Life of Brougham*, i. 400.

[2] By the Orders in Council neutrals were forbidden to trade directly with any port in Europe not open to British ships. The only way of reaching such a destination was by going first to a British port, landing their cargo, and reshipping it on payment of certain duties. And the same procedure had to be observed on the return voyage; a British port must be touched before home was reached. The commerce of the Continent was thus to pay toll, going and coming, and for the enemy, as Ministers contended, there was to be no trade except through Great Britain. What a picture it gives of the naval supremacy which could enforce such a system; see Captain Mahan, *Influence of Sea Power on the French Revolution*, ii. chapter xviii. for a luminous and unprejudiced account of the working of the Decrees and Orders.

was laid for the unhappy war with the United States. As yet our commercial classes had only a foretaste of what was to come, but they saw clearly that a terrible trial of endurance was before the country.

Brougham threw himself into this, the first great public cause in which he had been prominently engaged, with all his vigour. It was one that exactly suited his genius, and for long weeks during the spring and early summer of 1808 he was at the Bar of the two Houses, examining witnesses and delivering himself of a succession of speeches for which his studies on the principles of Colonial policy, the course of trade, and the theory of exchanges had amply stored him. No man ever possessed a more exact knowledge of the details of our exports and imports. It was said that not a ship cleared out of Liverpool or Hull but he had notice of the bill of lading. The petitioners were defeated, but they were hugely pleased with their advocate, and passed him a very handsome vote of thanks. What was more important, he was overwhelmed with offers of Admiralty and Prize cases in the Cockpit, and filled with hopes of Lancashire business. By means of a special motion at Lincoln's Inn it would be possible to get called to the Bar early in July, go the next Northern Circuit, and thus strike while the iron was hot.

I set out, he wrote to Lord Grey,[1] with too slender a provision of law, no doubt, and may, very possibly, never see a jury until I have to address it, my stock of practice being so slender that I never yet saw a *Nisi Prius* trial. But the points of law are few on a circuit, and by good fortune none of any difficulty may fall on me, and, as no great wizards go the Northern Circuit, I may push through the thing with a little presence of mind and quickness.

He was destined, however, to disappointment. According to his own account the Attorney- and Solicitor-General were 'sent down' to Lincoln's Inn to frighten

[1] *Life of Brougham*, i. 401.

the Benchers,[1] 'and, leaguing with Saint Allan Park (one of the greatest knaves in the profession),'[2] they rejected his application by a majority of one vote. Brougham stigmatised it as a vile political job, but it is a little difficult to see what claim he had to any special indulgence. The call was granted at the proper time, on November 22, 1808, but it was not followed by the anticipated flow of work. His acquaintance with the practice of the Courts was too small to enable him to make any rapid rise on Circuit or at Westminster; and even when business came he found himself surpassed in legal learning, tact, and temper by many who were his inferiors in every non-professional capacity. From the outset, however, he was in pretty constant request before Parliamentary Committees, in the Privy Council, and in Scotch appeals. It was here, in the House of Lords, that Lord Eldon so annoyed him by mispronouncing his name and calling him Mr. Bruffam. The outraged counsel retaliated by sending up a card with his name spelt phonetically BROOM; and the Chancellor, who never, even under the greatest provocation, failed in courtesy, acknowledged the correction in complimentary language: 'Every possible case has been cited; new brooms sweep clean.' But it was clear that he was not destined to take the Bar by storm, and not until he had acquired a Parliamentary reputation can he be said to have made his real start.

[1] *Life of Brougham*, i. 406.

[2] Apart from having his Christian name misspelt, this is somewhat hard measure for poor James Alan Park, 'the Christian Judge,' who, as the Northern Circuit chant had it,

'came naked stark
From Scotland.'

CHAPTER IX

LORD BROUGHAM'S CAREER AT THE BAR AND IN PARLIAMENT DOWN TO THE DEATH OF GEORGE III.

1810–1820

BROUGHAM had felt justifiable resentment at the failure of the Whig leaders to provide him with a seat in Parliament. 'All the loose seats are picked up, God knows how, before one hears of there being a vacancy,' he wrote to Lord Rosslyn in December 1807; and it was not until the beginning of 1810 that his expectations were gratified. The cause of this neglect is not perfectly apparent. The Opposition were not strong in debating talent in the House of Commons, and Brougham's handling of the petition against the Orders in Council left no doubt of his ability to cope with any Parliamentary emergency. 'His power of sarcasm, his amazing readiness, his energetic vigour of language made him, if not a very persuasive, at least a most formidable,' opponent.[1] Moreover, he had cast a spell over Earl Grey from which, with periods of short-lived freedom, that nobleman never extricated himself till the irreparable breach of 1834. Their correspondence is suggestive of the most intimate confidence;[2] and in September 1809 Grey said to Creevey: 'The first man this country has ever seen since Burke's time is Brougham.' 'Thereby,' adds the diarist, 'showing his folly.'[3] For some reason or another, at this period, the Whig boroughmongers, amongst whom

[1] Bagehot, *Biographical Studies*, 76.

[2] E.g., *Life of Brougham*, i. 459, where Lord Grey communicates to him the letter sent by Perceval, inviting him to combine with the Tory Administration.

[3] *Creevey Papers*, i. 107.

Creevey moved so freely, neither liked nor trusted Brougham. Possibly a hint may have been given that persistence in this course might lead the ostracised one to reconsider his party allegiance. In January 1810 the Duke of Bedford, at the suggestion of Lord Holland, found him a seat for the Cornish borough of Camelford, vacant by the accession of Lord Henry Petty to the earldom of Lansdowne.

His maiden speech, in support of a vote of censure upon the Ministry for their conduct of the Walcheren expedition,[1] was no very remarkable effort, as we may gather from the guarded language used by Horner in writing to the mother of the honourable member for Camelford :

> The manner in which he spoke was in every respect most parliamentary, and gave all his friends the most complete assurance of the success he will have in the House. His language and delivery were perfectly suited to the style which the House requires, and he showed himself to be in complete possession of it.

An examination of the speech shows few traces of that orator, 'impiger, iracundus, inexorabilis, acer,' who became in a single Session the plague and the terror of the Government. Yet in an incredibly short time he had made good his footing in the front rank of the Opposition. His 'power of mingling tenderness and scorn, argument and invective in sentences which rose in accumulated involution but righted themselves at last,'[2] proclaimed him a master of debate second only to Canning himself. His speech on moving an address against negro slavery,[3] a question which Wilberforce had readily surrendered to him, not only impressed the House deeply, but marked the position to which he had already attained.

[1] Hansard, 1st series, xvi. 7**, March 5, 1810.

[2] Compare Gladstone's criticism (Morley, i. 149), which might with equal propriety have been applied to himself. 'His management of sentences is most wonderful; he never loses the thread, and yet he habitually twists it into a thousand varieties of intricate form.' Brougham always maintained that his *forte* was argumentative declamation.

[3] Hansard, xvii. 658.

No subject was too small, too complicated, or too abstruse for his notice, and on all alike he was ready to pour out a fluent, if sometimes a discursive, stream of eloquence, lightened by flashes of bitter sarcasm and invective, and relieved occasionally by extravagant banter. He had a watchful eye upon the whole working of the State machine. Nothing that savoured of an increase in the Royal prerogative could escape his notice; he was adamant as to parliamentary control over the public money, and equally jealous of parliamentary privilege when exercised at the expense of the people. One of the earliest sparks from his anvil was the taunt against Mr. Secretary Ryder for considering himself 'a kind of depository of the dignity of the House.' He was as one crying in the wilderness in his advocacy of the Catholic claims; he was loud for purity of election and the abolition of sinecures. Acts of cruelty perpetrated under the cover of naval or military discipline, the illegal oppression of prisoners in gaol or madhouse, were dragged by him into the glare of day. The universal redresser of wrongs is not unknown in the modern House of Commons, and it is perhaps the highest tribute to his abilities that, instead of being looked upon as a bore and a busybody, 'Counsellor Brougham in a terrible fume' was accepted as an invaluable auxiliary.

By the end of his first session he was regarded as an open candidate for the leadership of the Opposition in the House of Commons, then held by the Right Hon. George Ponsonby. The 'New Whig Guide' contained the 'trial of Henry Brougham for mutiny, before Lord Grenville and a special jury,' in which the indictment charged him with having made

> divers propositions or motions without having communicated the same to the Right Honourable George Ponsonby, and with having called the said Right Honourable Gentleman an old woman contrary to good manners and the said George his place and dignity.

The case for the prosecution being closed,
the prisoner attempted to set up an alibi by the waiter of the Exchequer Coffee House, but failed, it being clearly proved that he had spoken thirty-two times on the night on which he alleged he was absent from the House.

Had Brougham been a model of suavity and of consideration for others, had he been free from all taint of self-seeking, from all suspicion of intrigue, such a sudden rise would scarcely have endeared him to the veteran occupants of the Opposition benches, and it is easy to detect in the pages of Creevey and elsewhere the mutterings of growing discontent. Even the friendly Horner had predicted 'that he would often cause irritation and uncertainty about him to be felt by those with whom he is particularly connected.'[1] But Lord Grey was firmly convinced of the value of the recruit, and during the early part of 1811, when the impending Regency seemed infallibly to portend a Whig Administration, he made Brougham the offer of serving under him in case of 'the supposed event.'[2] Brougham accepted, while protesting that 'the office in question'—namely, the Board of Trade —was infinitely above his pretensions. But the Prince Regent changed his mind, largely through the treachery of Sheridan, as Brougham declares, and left his old friends in the lurch; and the Whigs went back for another nineteen years into the wilderness; in the case of many of them it proved to be for the term of their natural lives.

Brougham's success in the House reacted favourably on his progress at the Bar. His name begins to appear in the pages of East,[3] and Maule and Selwyn, and he

[1] *Memoirs of Horner*, ii. 20. Brougham's ultimate estrangement from Horner, due apparently to no other motive but an almost insane jealousy, is one of the most painful and least defensible episodes in his wayward career. See Lord Dudley's *Letters to 'Ivy,'* 108–9, and Lord Holland, *Further Memoirs of the Whig Party*, 45.

[2] *Life of Brougham*, i. 520.

[3] East's *King's Bench Reports* cover the years 1785 to 1812. And in illustration of the ephemeral nature of a purely legal reputation, it used to be said that 'many stars may be seen twinkling in the *East* only to sink again to utter darkness.'

was getting into work on the Circuit. But still, and for some years to come, his practice did not exceed the proportions of what is supposed to confer the title of a 'rising junior.' Brougham was emphatically a man who wanted his case and his day to be carefully chosen for him. Given the occasion and the incentive, he could acquit himself in a style surpassed by no man at the Bar, but in the humdrum routine of goods sold and delivered, where there was no fierce attack to be made upon a witness, little room for sarcasm, and no opportunity for declamation he was ineffective. Even in cases of assault, of slander, of seduction, *et hoc genus omne*, where a trenchant cross-examination and a slashing speech are the main requisites, he was often at fault.

It was soon remarked, says Lord Campbell,[1] that he was more solicitous to gain distinction for himself than to succeed for his client; he could not resist the temptation to make a joke at his client's expense; he showed no tact in conducting a difficult case, and, if he was a vigorous, he was never a verdict-getting counsel.

Moreover, according to the same authority, he was singularly indiscreet in his questions when retained for a prisoner:

Seemingly he acted upon the supposition that his client was really innocent, a presumption of law which, nine times out of ten, was contrary to the fact.

Of the art of 'managing' a jury he knew nothing. If one of the twelve seemed inattentive he would stop, and, looking at the culprit, would protest that it was useless for him to proceed. Of the exquisite dexterity of Scarlett he had not the smallest trace. 'What do you think of the counsellors on the Circuit?' a North-country juryman was once asked at the end of a long assize. 'Why, there's not a man in England can touch that

[1] Campbell's *Life of Brougham*, 256.

Mr. Brougham.' 'But you gave all the verdicts to Mr. Scarlett?' 'Why, of course; he gets all the easy cases.' And there is a penetrating piece of criticism from the pen of Francis Horner[1] which explains Brougham's failure in another province of the legal domain:

I have been present at several arguments of his in Banc, of which I should not, to say the truth, make a very high report; that is, in comparison of his powers and reputation. Great reach and compass of mind he must ever display, and he shows much industry, that is, in collecting information. Precision and clearness in the details, symmetry in the putting of them together, an air of finish and unity in the whole are the merits of that style; and there is not one of these in which he is not very defective. But his desultory reasoning has much force in some parts and much ingenuity in others, and he always proves himself to have powers for another sort of speaking, and a higher sort.

These powers were given full play in the defence of John Hunt and Leigh Hunt, the proprietors of the 'Examiner,' against whom had been filed an *ex-officio* information for copying into their paper an article on flogging in the army which had originally appeared in the 'Stamford News.' The article, which was written by that Mr. John Scott who fell to Mr. Christie's pistol ten years later, contained a lurid account of the carrying out at Canterbury of a military sentence of 1,000 lashes, of which 750 were actually inflicted; and the article asserted that Bonaparte's troops were unacquainted with such degrading spectacles, and could not 'form any notion of that most degrading of all exhibitions on this side hell—an English military flogging.'

The case was tried in London before Lord Ellenborough, and Brougham had small hope of an acquittal, though the article was much less violent than the one on the same subject for which Cobbett had been punished the year previously. He exerted himself, however, to the utmost, maintained a tone of strict moderation, and

[1] *Memoirs*, ii. 123. December 8, 1812.

made copious use of pamphlets by Sir Robert Wilson and General Stewart, in which the practice of flogging was vigorously condemned. But his main point was the absence of 'evil, malicious, and seditious intent' in the article, and he skilfully impressed upon the jury that the real question before them was whether,

on the most important and most interesting subjects, an Englishman still has the privilege of expressing himself as his feelings and his opinion dictate.

Lord Ellenborough was unusually complimentary to the orator, but told the jury that he had no doubt that the libel had been published with the intention imputed to it, and that it was entitled to the character given to it in the information.

After two hours' deliberation they acquitted the prisoners; but the Government was in no mood to concede to the Press the freedom which Brougham demanded. Accordingly, John Drakard, the editor of the 'Stamford News,' was haled before the bar at the Lincoln Assizes. Brougham went down 'special' for the defence, in full expectation of repeating his victory. Baron Wood, who tried the case, was a greater stickler for the prerogative than 'old Rough' himself, whom, as plain Edward Law, he had indoctrinated in the mysteries of special pleading.[1]

The House of Parliament, he ruled, is the proper place for the discussion of subjects of this nature. There it should appear and not in pamphlets or newspapers. The right to discuss the acts of our legislature would be a large permission indeed. Is the libeller to come and make the people dissatisfied with the government under which they live? This is not to be permitted to any man. It is unconstitutional and seditious.

Brougham's speech was less discreet than on the previous occasion. He gave sundry 'shrewd nips' to the

[1] 'Old George,' as Wood was familiarly known, had the strong North-country burr which was observable to a less degree in the Lord Chief Justice. 'Na,' and 'Well, well, who do you caal?' were his constant phrases.

military hierarchy, and broadly suggested the familiar lines :

> That in the captain 's but a choleric word
> Which in the soldier is flat blasphemy.

The very offences of drunkenness and gallantry, which were part of the routine of an officer's existence in country quarters, brought down upon the rank and file the ruthless infliction of the lash. Drakard, who stood staunchly by his contributor, and refused to give up Scott's name, was found guilty, and sentenced to eighteen months' imprisonment.

Brougham's defeat at Lincoln was not allowed to cloud his success at the Guildhall. But the Hunts were born to trouble as the sparks fly upwards, and within two years of their acquittal they were being prosecuted (December 1812) for a libel on the Prince Regent. That ' Adonis in loveliness,' as a poet had styled him in the columns of the ' Morning Post,' was portrayed to the readers of the ' Examiner ' as

> a corpulent man of fifty, a libertine over head and ears in disgrace, a despiser of domestic ties, the companion of gamblers and demireps, a man who has just closed half a century without one single claim on the gratitude of his country or the respect of posterity.

Brougham again appeared for the defendants, and made, according to Horner and Campbell, both of whom were present, a powerful and in parts an eloquent speech. He is particularly praised by the former for the address with which he contrived, ' without giving any advantage, to fasten the words *effeminacy* and *cowardice* where everybody could apply them. One very difficult part of the case, the conduct of the Regent to the Princess, he managed with skill and great effect.' Brougham, as we shall see in the next chapter, was at this time the chief adviser of the unhappy Caroline : the long duel between him and her Royal spouse had already been renewed. Whether his speech was judicious from the point of view of the Hunts may be doubted. Lord Ellenborough told

the jury that the counsel was inoculated with all the poison of the libel. The defendants were found guilty and sentenced to two years' imprisonment and a fine of 500*l.* They got a hint that both fine and imprisonment would be remitted on a pledge to abstain from future attacks upon the Regent. The offer was rejected and the sentence was suffered.

These displays had for the moment set Brougham on a pinnacle in his profession, and Horner wrote in a burst of enthusiasm that his 'success at the Bar was prodigious; indeed much more rapid and extensive than that of any barrister since Erskine's starting.' Unfortunately his practice was only too prone to die away in the interval between one great forensic field day and its successor. In Parliament he had, however, effected what in later years he called the greatest achievement of his life,[1] the repeal of the Orders in Council, a feat which, by itself, was sufficient to establish his reputation as an advocate of the first order. Four years had elapsed since he first pleaded the cause of the Liverpool and Manchester merchants at the bar of the House. In that interval British commerce had suffered cruelly. With her trade dislocated and her markets gone—thanks to the combined operations of the Continental System and the American Non-Intercourse Act—it seemed as though the nation was bleeding to death. The number of bankruptcies multiplied at an appalling pace, merchants failed, factories shut their doors, the busy towns of the North were filled with unemployed and starving workmen whose misery and desperation formed a standing danger to the peace of the country. We can imagine what a topic this was for Brougham with his facility in absorbing and handling statistics, and with a knowledge of the details of foreign and colonial trade unsurpassed even by Mr. James Stephen, the originator of the orders.[2]

[1] *Life of Brougham*, ii. 1.

[2] Father of 'King Stephen' of the Colonial Office, and grandfather of Sir James Fitzjames and Sir Leslie.

After a struggle which lasted nearly the whole of the Session, Brougham won all along the line, and the Orders in Council were revoked on June 23, 1812; though, unknown to anyone on this side of the Atlantic, President Jefferson had approved a declaration of war with Great Britain five days earlier. This precipitate action of the United States was the only drop of bitterness in the cup, and so great was the confidence which Brougham had inspired that the Liverpool merchants made a representation to Lord Castlereagh begging that he might be sent to America forthwith to negotiate with the American Government. Whether Castlereagh viewed the project with favour, as Brougham asserts,[1] does not seem to be established, but the first weeks of war showed the utter futility of any such mission. And Lord Grey, who calls it, in writing to Brougham, 'your offer to go to America,' was right in thinking that he 'had had a lucky escape.'[2]

Brougham's conduct of the case will always be remembered as an example of what one man's tongue can effect in a free deliberative assembly.[3] Yet the much-execrated Orders had done their work.

Opposition orators, says Captain Mahan,[4] might harp on the definition of the word retaliation and carp at the method as striking neutrals and not the enemy. Like Napoleon, they blinked at the fundamental fact that, while Great Britain ruled the sea, the neutral was the ally of her enemy. The same simple principle vindicates the policy of the British Ministry. Folios of argument and oratory have been produced to show the harm suffered by Great Britain in this battle over commerce. Undoubtedly she suffered—perhaps it would not be an exaggeration to say she nearly died; but when two combatants enter the lists not for a chivalric parade but for life and death, it is not the incidental injuries but the preponderance of harm done and the relative endurance which determine the issue.

[1] *Life of Lord Brougham*, ii. 39. [2] *Ibid.* 41.
[3] See *Life of Brougham*, ii. chap. x., and *Speeches*, i. 395 *et seq.*
[4] *Influence of Sea Power on the French Revolution*, ii. 355.

The proceedings in the Commons were marked by a tragic incident in which some of the opponents of the Orders professed to see the hand of Providence. The Government had made the first sign of yielding by their consent on April 28 to the proposal that a committee of the whole House should enquire into the distress of the manufacturing and commercial interests, and examine witnesses from the great towns. And here, day by day, the battle raged between Brougham and Alexander Baring on the one side and Stephen and Spencer Perceval on the other. On the afternoon of May 11 the latter was not down at the House to time, and he was promptly sent for. Brougham was proceeding with the examination of his witnesses when he heard a report, as it seemed to him,

of a pistol which had gone off in some one's pocket in the gallery, the sound being deadened. This passed through my mind, but I did not interrupt my examination. Some persons were seen in the gallery running towards the door, so it seemed that the report had come from the lobby. Instantly after General Gascoyne rushed up the House and cried, 'He has been shot.' As I expected Whitbread, I asked if it was he. Gascoyne replied, 'No, Perceval; he is shot dead.'[1]

The ministerial changes consequent upon the murder of the Prime Minister were followed by a dissolution in the autumn. Some time previously Brougham had received notice to quit Camelford, that borough having been sold by the Duke of Bedford, in open contravention of a recent Act,[2] to a Mr. Carpenter of Mount Tavy. No patron made a move to supply the loss, and it became clear that, if he was to find a seat in the next Parliament, it must be for one of the 'open' boroughs in which the freemen, the pot-wallopers, or the payers of scot and lot, as the case might be, were allowed to dispose of their votes without dictation from any overlord.

Liverpool, though sharing the reputation for cor-

[1] *Life of Brougham*, ii. 15.

[2] 49 Geo. III. c. 118, Curwen's Act; *Life of Brougham*, i. 531.

ruption common to all these constituencies, seemed to offer a fair prospect of success, for it was thence that the earliest and most persistent opposition to the Orders in Council had proceeded. The two sitting members were Tories, Generals Gascoyne and Tarleton; but the latter, once so famous as a dashing leader of irregular horse in the Carolinas, had been rendering himself very objectionable to ministers by his carping attacks on the conduct of the war in Spain, and Canning was coming down to oust him. Tarleton, however, was induced to retire peaceably; and Brougham and Creevey were invited by the local Whigs, of whom Lord Sefton and Mr. William Roscoe were the leading spirits, to put themselves in nomination. There was a stirring struggle in which for several days Brougham ran second to Canning, but on October 15 General Gascoyne led him by 170 votes, and on the following day the Whig candidates retired. Creevey communicated the result to his spouse in pithy language: 'Well, my pretty, Diddy and Brog-ham are fairly done—beat to mummy.' [1]

Brougham's friends were deeply disappointed and attributed the real cause of his failure to the 'indiscretion of having joined Creevey with him [2] and attempting to carry the two seats.' Creevey, on the other hand, had regarded his colleague from the first with suspicion, tempered by admiration. Every day he was 'more struck with the endless mine of his intellectual resources;'

I have been perfectly amazed, he wrote, during this campaign at the marvellous talent of Brougham in his addresses to the people. He poured in a volley of declamation . . . which shook the very square and all the houses in it from the applause it met with.[3] Still, he added, I cannot

[1] *Creevey Papers*, i. 175. The figures were: Canning, 1,631; Gascoyne, 1,552; Brougham, 1,131; Creevey, 1,068. Tarleton was nominated after all, and received *five* votes; see Byron's introductory note to *The Waltz*.

[2] Horner, ii. 132; cf. *Life of Brougham*, ii. 64.

[3] Creevey, i. 172. During one of his election harangues he produced a profound effect by announcing the declaration of war by the

like him. He has always some game or underplot out of sight, some mysterious correspondence—some extraordinary connection with persons quite opposite to himself.

It is evident that Brougham had already acquired the habit which clung to him through life of engendering suspicion in the minds of all who worked with him.

To Creevey the defeat was of little consequence, for he had already been returned for Thetford, but upon Brougham it entailed a mortifying exclusion from Parliament for three years. In spite of his brilliant services during the last session the Whig aristocracy declined to look upon him as indispensable. So far from finding one of the many nomination boroughs placed at his disposal, he received 'from all the leaders regular letters of dismissal thanking me for past services, &c.' He bitterly felt what in the circumstances was a gratuitous affront, and hesitated whether he should condescend to practise before parliamentary committees—then as now the easiest and most lucrative branch of the profession—and make enough money to buy a seat. He could then

come in and enjoy the purest of all pleasures: at once do what I most approve of in politics, and give the black ones an infernal licking every other night.[1]

Finally, however, he determined to stick to the legitimate trade, wait for an opportunity of getting back to the House, and meanwhile strengthen if possible his party claims. In this last respect he was remarkably successful. He was the first member of the Opposition to see how the wrongs of the Princess of Wales, with whom he was now on confidential terms, might be

United States. There were universal cries of 'God help us,' 'God help us.' 'Aye,' cried Brougham, 'God help us, God of His infinite compassion take pity on us, God help and protect this poor town and this whole trading country.' Brougham's own account of the Liverpool election is contained in an interesting letter to Lord Grey (*Life*, ii. 61).

[1] Creevey, i. 174.

utilised as a stick to beat the Government with. The methods he adopted will be described in the following chapter.

During these years of exclusion Brougham had several tantalising nibbles, the most promising of which was connected with a famous trial in which he himself played a part, though only a subordinate one. In May 1814 an indictment for conspiracy was preferred by members of the London Stock Exchange against Lord Cochrane the famous seaman, his uncle Mr. Cochrane Johnstone, M.P., a refugee of Prussian extraction named De Berenger, and several others, for disseminating false news of the death of Napoleon, and causing a rise in the Funds on February 21. The trial took place at the Guildhall on June 8 and 9 before Lord Ellenborough and a special jury, and the defendants were all found guilty. To his dying day Lord Cochrane asseverated his entire innocence, but the evidence at the trial was of a most compromising nature, and the numerous exculpatory documents put forward by him from time to time fail, in my judgment, to carry conviction to anyone who has studied the facts.[1]

Brougham had been retained, jointly with Best, Scarlett, and Topping, on behalf of the Cochranes and Butt, the agent in their Stock Exchange transactions. Best and Scarlett 'led' him, the other defendants were also represented by men of eminence at the Bar, including James Alan Park, Serjeant Pell, and Denman, so his chances of distinction were few; he examined one or two witnesses, but he had no opportunity of making a speech. His real interest in the case was out of doors. From the first moment that scandal had rested on Lord

[1] Lord Cochrane, or rather Lord Dundonald, as he had then become, received a free pardon on March 24, 1832, and was restored to the rank in the navy—Rear Admiral—which he would have attained if his name had not been removed from the list in 1814. In 1847 he was replaced in the Order of the Bath, and in the following year he received the command of the North American and West India station. For a full account of the whole case I would venture to refer to my *Trial of Lord Cochrane before Lord Ellenborough*, published in 1897.

Cochrane's name the prospect of an early vacancy for the City of Westminster, which he then represented in Parliament, had been visible, and as early as March 12 there was talk in the papers about starting a canvass on Brougham's behalf. The sentence pronounced upon his Lordship by the Court of King's Bench on June 21 was followed by his expulsion from the House of Commons on July 5.[1] All arrangements, so Brougham wrote to Lord Grey, had been made for his own unopposed 'walk over the course.' But the severity of Cochrane's punishment,[2] combined with the vehement denial of his guilt which he made from his place in the House, had produced a strong revulsion of feeling in his favour. And when the day of election arrived no other candidate was put in nomination.

The blow to Brougham's hopes was not softened by the debates in the House of Commons, in which the conduct of Lord Cochrane's counsel was violently impugned. They were especially blamed both by Whitbread and by George Ponsonby for not having called his servants as witnesses. 'The history of presumption,' Brougham wrote bitterly to Lord Grey,

> offers no greater instance. We had too good reasons for not calling them, and were I to-morrow to conduct it again I should, after the benefit of their advice, still refuse to call any of them, and so would all the profession.[3]

During his years of exile from Parliament, Brougham kept up a regular correspondence with Lord Grey, the only one of the Whig leaders who seems to have been genuinely desirous for his return to St. Stephen's. These letters are especially interesting from the running comment they contain upon the Peninsular war, and the last campaigns of Bonaparte. From the date of Wel-

[1] *Memoirs*, ii. 105 ; *cf.* Hansard, xxxv. 370.

[2] A year's imprisonment, a fine of 1,000*l.* and the pillory. This last was remitted by the Crown.

[3] *Life of Brougham*, ii. 238. For Brougham's own reflections on the trial, see his *Statesmen of George III.* iii. 220.

lington's second landing in Portugal, Brougham could find nothing but contempt and derision for the conduct of the British General and the Ministers who supported him. He had already demonstrated in a series of articles in the Edinburgh Review the hopelessness of the Spanish cause and the insanity of attacking the French military power in that quarter; it was the 'combustion' —to use Jeffrey's expressive term—caused by one of these, the very Don Pedro de Cevallos review referred to by Byron,[1] which led to the establishment of the 'Quarterly.' In July 1809 Sir Arthur Wellesley was fiercely attacked for fighting at Talavera, while the Government was denounced for attempting to palm off upon the country a scarcely averted defeat dressed up as a victory; and his private correspondence is in exactly the same vein. On October 23, 1810, he writes with ill-disguised approval of the 'brisk little game' which Masséna is playing.

> It argues a great confidence of succeeding. As for the affair of Busaco, which we call a victory, it seems only that the French, instead of surrounding and destroying our army, drove it back seventy miles.[2]

A month later he was commiserating Lord Grey on his possible succession to 'a pretty inheritance of blunders and misfortunes,' amongst which would rank conspicuously 'the fine position of Torres Vedras!' And on July 17, 1813, after the crowning mercy of Vittoria, he prophesies that the people down at the Temple, 'who have been crazy about the late victory, will probably not come to their senses till Lord Wellington begins in November to fall back towards Portugal.[3]

The evacuation of Northern Spain by the French and the forcing of the Pyrenees brought him to a somewhat saner frame of mind; we hear nothing more in depreciation of Wellington, but he still pins his faith to Napoleon.

[1] *Supra*, 179. [2] *Life of Lord Brougham*, i. 507-8. [3] *Ibid.* ii. 78.

No one, he declared in August of the same year, can count upon such an army as his being routed when frost is out of the question, and I don't believe even the 'Morning Post,' or the very Regent himself, dreams of attacking France, so that upon the whole, we are, as usual, laying in stores of disappointment.[1]

And after Leipsic he gives vent to his spleen in characteristic terms:

I suppose if the worst happens to Bonaparte, viz. being driven within the Rhine, we shall hear of nothing but Europe having been saved, and the Pittites will begin to crow as if they had won the game at last.[2]

Those extracts might be multiplied,[3] but they are sufficient to show the temper in which the life-and-death grapple between England and Napoleon was regarded by a section of the Opposition, and they go some way towards explaining Byron's lines about the Whigs not getting into place.

Brougham was back in Parliament once more at the beginning of 1816, having been returned for Winchelsea in the summer of the previous year. His new patron, the Earl of Darlington, was one of the peculiar products of the pre-Reform era. His command of votes in the Commons brought him a marquisate in 1827, and he is said to have obtained the Dukedom of Cleveland in 1831 by the cheerful sacrifice of his rotten boroughs to schedules A. and B. Campbell alleges that Lord Darlington's attention was first drawn to Brougham's merits by his second Countess, a lively lady with an equivocal past, who flits across the pages of Creevey. But for the present and for many years to come his political views were in thorough accord with those of his nominee, and

[1] *Life*, ii. 83.

[2] *Ibid.* ii. 87.

[3] For a *catena*, see an article by Mr. E. D. J. Wilson in the *Nineteenth Century* for August 1878, and see also a letter from Brougham to Creevey, September 15, 1813. 'I beg to remind you of my predictions—viz. Wellington's retreat in November or December, and a separate peace on the Continent before Christmas.'

Brougham simply says [1] that the seat was offered to him at the request of his steady friend Lord Grey.

Absence had not dimmed his ardour, and his presence soon made itself felt, not always, however, to the satisfaction of his own side of the House. On February 20 the Opposition brought forward a motion of disapprobation on the recent increase of the salary of John Wilson Croker, Secretary to the Admiralty, and it was thought that there was a good prospect of placing Ministers in a minority. Brougham, however, seized the occasion for a violent attack upon the Regent, whom he denounced 'in Suetonian terms which would not have been too strong for the latter days of Tiberius.' [2] The general disgust gave the Government a majority of twenty-nine, and the feelings of the minority are expressed by a parliamentary correspondent of Creevey's, Mr. Western, in language which is in keeping with the literary associations of his name:

I have often marvelled at the want of discretion, judgment and common sense that we see so frequently accompany the most brilliant talents, but damn me if ever I saw such an instance as that I have just witnessed in your friend Brougham; he has uttered a speech which for power of *speaking* surpassed anything you ever heard, and by which he has damned himself past redemption; where the devil a fellow could get such lungs and such a flow of jaw upon such an occasion as this surpasses my imagination.[3]

And Romilly wrote regretfully in his diary:

Brougham is a man of the most splendid talents and the most extensive acquirements, and has used the ample means which he possesses most usefully for mankind. It would be difficult to overrate the services which he has rendered the cause of the slaves in the West Indies or that of

[1] *Life of Brougham*, ii. 236.

[2] Romilly, iii. 237. 'The comparison,' says that writer, 'was equally injudicious and unjust, for, with all the Prince's faults, and they are great enough, it is absurd to speak of him as if he were one of the most sensual and unfeeling tyrants that ever disgraced a throne.'

[3] Creevey, i. 249.

the friends to the extension of knowledge and education among the poor, or to praise too highly his endeavours to serve the oppressed inhabitants of Poland. How much it is to be lamented that his want of judgment and of prudence should prevent his great talents and such good intentions from being as great a blessing to mankind as they ought to be.[1]

But, so far from being damned past redemption, Brougham is found in a few days' time leading the assault upon the Income Tax and making Vansittart, the Tory Chancellor of the Exchequer, withdraw that highly unpopular impost. The same tactics were employed that had been used so successfully against the Orders in Council; a fusillade of petitions, night after night, each one giving rise to a debate. And when Vansittart showed signs of impatience, Brougham solemnly gave notice that he should avail himself of all the forms of the House to obstruct a measure which there 'appeared a manifest design to hurry through.'[2] This running engagement was admirably suited to what Creevey calls 'the profound resources of old Brougham.' On one occasion the routine was broken by the presentation, from some unexpected quarter, of a petition *in favour* of the tax; he immediately suggested that the prayer should be granted by a private and local Act imposing it upon the place whence the petition had proceeded.

In a letter to Lord Grey at the beginning of the Session, Brougham had indicated 'retrenchment' as the rallying cry of the Opposition,[3] but had advised that in matters of foreign politics they should act as an army of observation and seize any occasions of attack which might offer. Such occasions were not wanting long, and the manifesto of the Holy Alliance and the tyranny of Ferdinand of Spain gave opportunity for much fervent

[1] Romilly, iii. 237.

[2] To which it was answered that 'if he came down with a studied design to interrupt the proceedings of the House, the House would know how to protect itself and how to assert its own dignity.'

[3] *Life of Brougham*, ii. 306.

rhetoric. In the intervals of opposing the Income Tax and the Malt Tax, he found time for creating a bogey of his own, and the Government, which was busy in reducing the army establishment and in forgetting the lessons of the great war, was denounced for militarism. Years afterwards he declared that his speech of March 1816 in support of Mr. Calcraft's amendment to substitute 192,638*l.* 4*s.* 9*d.* for 385,276*l.* 9*s.* 6*d.*, the estimate for the Household troops, had a greater success than any other made by him in Parliament. He protested against the obnoxious growth of military parade in the streets of the metropolis, and he discerned a danger to public liberty in the establishment of what is now the Senior United Service Club.[1]

In short, during this and the following Sessions there was no subject raised, susceptible of debate, in which he did not keep Ministers on the alert, and his restlessness and discursive oratory brought him into perpetual wrangles with his fellow-members, during which lessons in manners and deportment were freely exchanged.

He spoke with a frequency and a fecundity, says Hayward,[2] indicating a determination to make up for lost time. He was like Munchausen's trumpet when the frozen tunes began to thaw. He got into frequent conflicts with Canning, a congenial spirit in many ways, but rather eschewed Castlereagh, whose calm and bold front disconcerted if it did not cow and intimidate him.

'As you may imagine,' wrote Mr. Bennet, one of the 'Mountain,' to Creevey in 1816,[3] 'our friend Brougham has

[1] Hansard, xxxii. 1077. March 4, 1816. 'He regretted that anything like ridicule was attempted to be thrown on those who felt jealous on this subject, because he felt considerable jealousy himself. If the institution stood alone he should feel less jealousy; but it formed only a part of the system which had been denounced in that House and throughout the country—a system which could only be carried into effect by slow and progressive steps, and which had for its object to alter the character of the country, and make us more than we had hitherto been, a military people. Such an institution would certainly be one of the most powerful engines for carrying this intention into effect.'

[2] *Quarterly Review*, cxxvi. 43.

[3] Creevey, i. 257.

done everything this year with no help, for there literally is no one but Folkestone who comes into the line and fights.' But he added, a few weeks later, when the death of George Ponsonby had left the Opposition without a leader in the Commons, 'Brougham cannot take the place, for his unpopularity and want of discretion.' So that thankless task was left to Mr. Tierney, the elder of Creevey's 'Coles.'

It has been Brougham's fate to be judged too much by his escapades to the exclusion of the solid work which his extraordinary powers of application enabled him to accomplish. It is from these years that we may date the beginnings of his efforts in the cause of popular education, a subject in which he was genuinely interested, and which he never ceased to champion to the end of his long life. On May 21, 1816, he moved for and obtained the appointment of a select committee of the House of Commons to enquire into the state of education of the lower orders of the people in the metropolis. Recent revelations had drawn attention to the fact that many thousands of the children in the districts of St. Giles's and Shadwell were totally destitute of education, and that their state of ignorance was accompanied by the most shocking misery and depravity. And in moving his resolution Brougham sketched the outlines of a plan for educating the children of the poor by Parliamentary assistance, beginning first, by way of experiment, with London.

The committee, of which Brougham was chairman, were indefatigable in their labours. In barely a month they presented a report in which they recommended that Parliament should take immediate measures for extending the 'blessings of education' to the poor of all descriptions, and urged the expediency of instituting an enquiry into the management of charitable donations and other funds for the instruction of the poor in different parts of the country. It had long been believed that all over England and Wales endowments which were intended

for the education of the people—whether elementary or secondary, to use the modern terminology—had been either diverted and lost, or applied in a totally inefficient manner. The enquiry into the state and conduct of many of the schools founded by charitable persons in or near the metropolis had brought to light a body of very curious and interesting information, and had raised strong suspicion as to the misapplication of educational and charitable funds generally. The cases of malversation and of negligence which had come before the committee suggested the appointment of a parliamentary commission to bring to light the still more numerous cases which were believed to exist throughout the country at large.

In March 1818—the enquiry having been hung up during the previous year on account of Brougham's indisposition—the 'Select Committee on the Education of the Lower Orders' was reconstituted, with its powers no longer confined to the metropolis. It consisted nominally of forty members, of whom Brougham again was chairman, but it is alleged that the daily attendance seldom exceeded three or four. The chairman was in enjoyment of ample leisure just then, and it is not too much to say that, like cunning old Fury, he tried the whole cause with small assistance from his colleagues. The discoveries of 1816 had whetted his appetite and put him on the scent. To quote his own words:

> The interest excited by this investigation soon became so great as to interfere with the other objects of the Committee's appointment; and everything that related to the extension of education, otherwise than by improving the application of endowments, was either neglected or lost in the anxiety to prosecute an enquiry, which, by detecting abuses of those endowments, promised to the curiosity or the malignity of the public the discovery of individual delinquency in persons of eminent condition.[1]

The enquiry, which had been originally limited to the possibility of educating the lowest orders of the metro-

[1] *Speeches*, iii. 4.

polis, and the consideration of the measures to be taken with the children of paupers found begging in the streets, now received a remarkable extension. The chairman summoned before him the Provost of Eton, and published the Bursar's accounts for the preceding year; he went minutely into all the particulars of the internal government and expenses of Winchester; and he minutely cross-examined the Master and two Senior Fellows of St. John's College, Cambridge, as to the exact amount of their several incomes, as well as the number, value, and disposition of the livings in College patronage. At last the Master, Dr. 'Jimmy' Wood, a dignified clergyman of high character and great learning, whose generosity had been recently displayed in large benefactions to the Sizars of the college, burst into tears on the suggestion that the Fellowship elections were influenced by corrupt motives—'a very simple and very civil question, addressed to him in very respectful tones,' as Brougham explained in the introduction to the collected edition of his Speeches.[1]

There can be no doubt that Brougham widely exceeded his powers, that in this and in other instances he was betrayed into exaggeration, and that he was prone to accept the *ex parte* statements of aggrieved or interested individuals without waiting for the explanation of the incriminated parties. On the other side of the balance-sheet he obtained a mass of invaluable information as to

[1] *Speeches*, iii. 6, and for the speech itself see *ibid.* 199. The Johnians had been dragged into the maelstrom by the 'strange case' of Pocklington School in Yorkshire, the visitor of which, under a Statute of Henry VIII., was the Master of St. John's, Cambridge. Pocklington, where Wilberforce had been a pupil fifty years earlier, had fallen from its former high estate, and now supported only a headmaster, and, as the Commissioners alleged, a single pupil, who was said to have been discovered, anticipating the educational methods of Mr. Squeers, in a sawpit. This last story was vehemently denied, and it appeared that St. John's, under their visitorial powers, were taking steps to restore the school to its former state of usefulness; but it was made the handle none the less for a general inquisition into the affairs of the Cambridge foundation.

the misapplication of the charitable and educational endowments in which England is peculiarly rich. But he felt that as yet he was only on the threshold, and that a permanent body of commissioners must be established to carry on the exposure and protect the interests of the poor. A Bill for this purpose had been duly drafted when Ministers intervened.

They had sympathised with Brougham's original object, but they were not prepared to cast the universities and the public schools into the melting pot. His Bill was accepted as a Government measure and introduced by Lord Castlereagh, but with modifications which in the author's eyes robbed it of all efficacy. The appointment of the twenty commissioners, ten paid and ten unpaid, who were to investigate all breaches of trust, irregularities, frauds, and abuses, was vested in the Crown. And it was expressly provided that their powers were not to extend to Oxford or Cambridge, nor to schools of which the universities or their colleges were trustees, nor to the half-dozen 'public schools,' nor to cathedral or collegiate churches, nor to any college, free school, or other charitable institution which possessed special visitors, governors, or overseers appointed by the founders.

Brougham felt that his guns had been spiked, but submission was the only practical policy. He made an effort to defeat the exemption afforded to the specially visited schools, but was beaten on the division by 107 to 75. The debate, however, gave him an opportunity for delivering some notable blows. His proceedings on the committee, especially those relating to the inquisition into the universities, had been criticised in a powerful and biting article in the Quarterly Review, which, though composed by Dr. Monk, afterwards Bishop of Gloucester, 'owed its pungency and popularity to the touches of Mr. Canning and Mr. Croker.' [1]

[1] *Quarterly Review*, xix. 492; cxxvi. 43. The powers of ridicule were exhausted in a description of the 'Reformers' College,' as the establishment of the paid Charity Commissioners was dubbed. It had

This article formed the groundwork of a vigorous attack upon the Education Committee and its chairman on the part of Mr. Peel, the newly elected member for the University of Oxford. Brougham claimed the sympathy which the House of Commons always accords to a member assailed without due notice. Years afterwards he piqued himself on having 'laid it in' to Peel on this occasion in the most merciless manner; 'it was like having his hand seized while picking a pocket.'[1] Peel indeed had showed himself better posted in matters relating to Oxford than to the sister university, one of whose members, while condemning the objectionable nature of the questions put to Dr. Wood, 'regretted the very unnecessary and unfounded discussion.' And Wilberforce flung his sword into the scales with a fervent tribute to the incalculable benefits which Brougham conferred by setting on foot the investigation. To this verdict indeed he is justly entitled, and the awakening of the national conscience to the sacred nature of endowments may not unfairly be set off against his too frequent asperities and infirmities of temper. The investigation into those charities whose affairs were managed by the Court of Chancery had been productive of some trenchant comments upon that tribunal, and

been contemplated by Brougham that he and his colleagues should nominate the original members, who were, of course, to be members of the Bar; 'pauperes et indigentes barristeros,' according to the reviewer, who continues with a hit at Brougham's Latinity: '"*Ego et* committee *meus*," says the benevolent chairman, "had applied ourselves with much attention to *assist the legislature* in making the selection." It is even affirmed, we know not how truly, that with the assistance of the gentlemen of the British Museum, the learned institutor had actually constructed the statutes of his foundation in that language, of which his late researches have made him so absolute a master; and that the oaths to be taken by each candidate for a fellowship, and by each fellow upon his admission, ran in something like the following terms—the first *se nunquam duo vel plura brevia intra biennium accepisse*; the second of a more awful import—*se nullas prorsus habere possessiones præterquam unam purpuream baggam flaccescentem omnino inanitatis causa*.'

[1] Creevey, ii. 46.

Lord Eldon strove hard to mitigate and amend as far as possible the powers conferred upon the Commissioners. He brought down upon himself from the mouth of Brougham 'a studied philippic, wherein all his powers of ridicule, sarcasm, and declamation were summoned into full play.'[1] The philippic was not without effect upon his professional position a few years later.

During the new Parliament, elected in 1818, Brougham continued to sit for Winchelsea, though he had made another gallant attempt to obtain an independent footing within the walls of the House of Commons. Lord Lonsdale's influence was supreme in Westmorland, but the owner of Brougham Hall appealed to the freeholders against the domination of Lowther Castle. The effort failed, nor did he meet with greater success in 1820, or again in 1826; but his standing within the ranks of his party was enhanced none the less by these contests. They were carried on with a fair amount of good humour. Wordsworth, however, had contributed an anti-Brougham pamphlet of which Crabb Robinson[2] writes in high terms of praise, and Brougham succeeded in falling foul not only of him but of the Southey family as well. It did not require much to arouse the animosity of an Edinburgh Reviewer against the 'Lakers.' There is a sentence of his, uttered at Appleby, which might serve as the English equivalent of 'Don't nail his ear to the pump.' He declared that he could only consider as his greatest enemies those supporters who attempted to perpetrate any act of violence :

> but, if you are to commit no violence yourselves, neither are you to bear any from others; you must not be the first to begin, but if any insulting attempt is made upon you I hope you will show your antagonist the bottom of the river.

[1] Twiss's *Eldon*, ii. 315.

[2] *Diary*, iii. 169.

During the debates on the so-called Six Acts and on the agitation arising out of the Peterloo tragedy Brougham took a moderate and not at all a conspicuous part. His view was that the proceedings of the Radicals had been unjustifiable, 'and although not sufficiently so to warrant the harsh measure of the Government, still bad enough to make the reflecting men consider that the time was come for taking some steps in support of order, but not forgetting the redress of the grievances complained of.' And he wrote to Lord Grey in October 1819 that

> the Radicals have made themselves so odious that a number, even of our own way of thinking, would be well enough pleased to see them and their vile press put down at all hazards.[1]

Twelve years later he was led to form a different view as to the practical merits and utility both of the Radicals and their press. For the moment, however, his attention was mainly occupied with the affairs of the Princess of Wales, which had assumed a new and threatening aspect since the death of her daughter in November 1817.

[1] *Life of Brougham*, ii. 345, 348.

CHAPTER X

THE STORY OF QUEEN CAROLINE FROM HER MARRIAGE TO THE INTRODUCTION OF THE BILL OF PAINS AND PENALTIES

1795–1820

GEORGE, Prince of Wales, was married to his cousin, Caroline Amelia Elizabeth, on April 8, 1795. Herself the daughter of that Duke of Brunswick who was mortally wounded at Auerstadt, and the sister of his successor, who fell at Quatre Bras, her mother, the Princess Augusta, was the elder sister of George III. At the time of her marriage she was twenty-six years old, and Lord Malmesbury, who had been despatched on a special mission to solicit her hand and to escort her to England, has left a vivid picture of his first impressions :

> A pretty face, not expressive of softness, her figure not graceful, fine eyes, good hand, tolerable teeth, but going, fair hair and light eyebrows, good bust, short, with what the French call *des épaules impertinentes*, most happy with her future expectations.[1]

Malmesbury, the '*rusé et audacieux Harris*' of Mirabeau, was the most experienced and most skilful British diplomatist of his generation. A courtier and man of the world to the finger tips, he had abundant opportunity for appraising the Princess during five months for which he was her almost daily mentor. After six weeks' acquaintance he sums up her character :

[1] *Diaries and Correspondence of James Harris, Earl of Malmesbury*, iii. 153.

She has quick parts, without a sound or distinguished understanding, a ready conception but no judgment: caught by the first impression, led by the first impulse; turned away by appearance or *engouement*; loving to talk and prone to confide and make missish friendships that last twenty-four hours. Some natural but no acquired morality, and no strong innate notions of its value and necessity; warm feelings and nothing to counterbalance them; great good humour and much good nature, no appearance of caprice; rather quick and *vive*, but not a grain of rancour; fond of gossiping, and this strengthened greatly by the example of her good mother. In short, the Princess, in the hands of a steady and sensible man, would probably turn out well, but, where it is likely she will find faults perfectly analogous to her own, she will fail. She has no governing powers, though her mind is physically strong.[1]

The well-bred and fastidious Minister found only too much to criticise in the deportment of the Princess. She was reckless in her talk to the verge of indelicacy. She gave serious umbrage by sending down to him in the hands of her page a newly extracted tooth. And at last he was compelled to take his courage in both hands, and,

as far as was possible for a *man*, to inculcate the necessity of great and nice attention to every part of dress, as well to what was hid as to what was seen. I knew, he adds, that she wore coarse petticoats, coarse shifts and thread stockings, and these never well washed or changed often enough.

He tried to explain to her that it was no credit to pique herself on rapidity in dressing; and he got her lady-in-waiting to explain to her, 'that the Prince is very delicate, and that he expects a long and very careful *toilette de propriété*, of which she has no idea.'

The conversation sometimes took strange turns. One evening at dinner he found the Princess and her mother agitated and uneasy over an anonymous letter from

[1] *Malmesbury Diaries*, iii. 196.

England. It was aimed at a lady high in the favour of the Prince of Wales, and its object was

to frighten the Princess with the idea that she would lead her into an affair of gallantry, and be ready to be convenient on such an occasion. This did *not* frighten the Princess, although it did the Duke and Duchess ; and on my perceiving this, I told her Lady ——[1] would be more cautious than to risk such an audacious measure, and that besides it was *death* to presume to approach a Princess of Wales, and no man would be daring enough to think of it. She asked me whether I was in earnest. I said such was our law ; that anybody who presumed to *love* her was guilty of *high treason* and punished with death, if she was weak enough to listen to him ; so also would *she*. This startled her.[2]

Written five-and-twenty years before the introduction of the Bill of Pains and Penalties, these words startle us, and we find a clue to her cryptic saying to the Duke of Wellington, '*on a diablement peur de la corde dans ce pays-ci*.'[3]

On April 5, 1795, the Princess and her escort reached Greenwich, and she drove straight to St. James's, where she was to be introduced to her future spouse. The Prince of Wales was then in his thirty-third year ; married in violation of the law to Mrs. Fitzherbert, he was, for the moment, deep in a notorious *liaison* with Lady Jersey, whom, with almost incredible want of taste, he had ordered to drive up to London in the coach with his betrothed bride. He had only consented to enter the bonds of legal wedlock on consideration of the payment of his debts by the nation and of a substantial addition being made to his income, but he had received complimentary and even alluring descriptions of his cousin from his brothers, the Dukes of York and Clarence. His letters had shown the impatience of an anxious lover, and he was apparently in a frame of mind to

[1] Obviously Lady Jersey.
[2] *Malmesbury Diaries*, iii. 189.
[3] Stanhope's *Conversations with the Duke of Wellington*, 92.

welcome his fate. Lord Malmesbury's account of the meeting at which he was the sole witness is historical. The Princess had attempted to kneel to the Prince.

He raised her (gracefully enough), and embraced her, said barely one word, turned round, retired to a distant part of the apartment, and, calling me to him, said, 'Harris, I am not well, pray get me a glass of brandy.' I said, 'Sir, had you not better have a glass of water?' upon which he, much out of humour, said, with an oath, 'No; I will go directly to the Queen,' and away he went.[1]

The disillusionment was as complete as that of Henry VIII. when first confronted with Anne of Cleves in the flesh. A quarter of a century of domestic misery and national scandal might have been spared had it been practicable for the Prince to follow the summary methods of the majestic Tudor. Well might the Princess exclaim: '*Mon dieu! Est-ce que le Prince est toujours comme cela? Je le trouve très gros, et nullement aussi beau que son portrait.*' Nor did the day close more auspiciously than it began. At the State banquet which followed, Lord Malmesbury

was far from satisfied with the Princess's behaviour; it was flippant, rattling, affecting raillery and wit, and throwing out coarse vulgar hints about Lady J[ersey], who was present; and, though mute, *le diable n'en perdait rien.* The Prince was evidently disgusted, and this unfortunate dinner fixed his dislike, which, when left to herself, the Princess had not the talent to remove; but by still observing the same giddy manners and attempts at cleverness and coarse sarcasm, increased it, till it became positive hatred.

The wedding ceremony was celebrated late on the evening of April 8 at St. James's Chapel Royal. The King found it necessary to prompt his son through the mazes of the marriage service. Malmesbury records that the latter had manifestly had recourse to wine or spirits,

[1] *Malmesbury Diaries*, iii. 218.

and Caroline in after years declared that her husband was intoxicated for the greater part of the night.

It is impossible, the old diplomatist concludes, to conceive or foresee any comfort from this connection, in which I lament very much having taken any share, purely passive as it was.[1]

A melancholy prediction, but falling far short of the reality. The Prince of Wales did not even go through the form of cloaking his infidelities, and he outraged the commonest decencies by forcing Lady Jersey into the Princess's household as lady-in-waiting, and by continuing her there in spite of the remonstrances of his insulted wife.[2] On January 7, 1796, was born Princess Charlotte, 'the fair-hair'd daughter of the Isles.' From that hour the Prince of Wales separated himself from his wife, and in spite of the urgent endeavours of the King to effect a reconciliation the breach was final.[3] Banished from her husband's presence, the Princess of Wales spent the next few years in retirement, and not unhappily, living with a modest establishment at Montagu House, near Blackheath. Her father-in-law was uniformly kind, Pitt threw his powerful ægis over her, and the leaders of the Tory party, from Eldon to Canning, became *habitués* of a house where, as Brougham tells us, agreeable society was always assembled, and where the mistress was, in the language of Canning, 'of fascinating manners, of easy access, and of an open and generous disposition.' Unhappily this was not to last. In the days before her marriage Lord Malmesbury had constantly admonished her against over-familiarity with her inferiors. He had reminded her that she might be affable without forgetting that she was Princess of Wales, and that she should never listen to her ladies 'whenever they attempted anything like a *commérage*.'[4] Most of

[1] *Malmesbury Diaries*, iii. 220.

[2] See *Life of Brougham*, ii. 137.

[3] The letter in which the Prince communicated to his wife his irrevocable decision is given by Brougham, *Life*, ii. 136.

[4] *Malmesbury Diaries*, iii. 167.

Caroline's misfortunes were due to the neglect of this advice.

Among her especial friends at Blackheath were Sir John Douglas and his wife. Sir John, who was equerry to the Duke of Sussex, had distinguished himself with the marines at Acre, under Sir Sidney Smith; and the latter, together with other naval officers, was constantly about the house, and was admitted to the intimacy of the Princess of Wales. The ladies fell out, and in November 1805 rumours very injurious to the reputation of the Princess reached the ears of the Duke of Kent, and were by him communicated to the King and the Prince of Wales. The Princess had a passion for children. Her own baby daughter was living away from her under the care of governesses, and she had recently adopted a little boy, whom she treated as if he were her own son. Scandal, of which Lady Douglas was the principal mouthpiece, asserted that this actually was the case, and assigned the paternity to Sidney Smith, or in the alternative to a certain Captain Manby.[1] The King, before whom the Prince of Wales made formal complaint early in 1806, found it necessary to institute an enquiry, and temporarily to forbid her the Court.

The Ministry of All the Talents, whose members were for the most part friends of the Prince rather than the King, was now in office. A special committee of the Cabinet, consisting of Lords Erskine, Spencer, Grenville, and Ellenborough, with the Solicitor-General, Sir Samuel Romilly, as secretary, instituted the 'Delicate Investigation' into the conduct of the Princess. It was an investigation at which she was not represented, and to which she was no party; but the incriminatory stories of Lady Douglas were contradicted in many important particulars, and it was conclusively established that the Princess's *protégé*, 'Billy Austin,' was the son of a sail-

[1] The name of Sir Thomas Lawrence, whose portrait of Caroline is the best known presentment of her in her brighter days, was not spared in this connection.

maker's wife at Deptford, and had been born in the Brownlow Street Hospital.

The committee reported to the King [1] that the graver charges against the Princess had been satisfactorily disproved, but they found that the declarations laid before them

> contained other particulars respecting the conduct of her Royal Highness, such as must, especially considering her exalted rank and station, necessarily give occasion to very unfavourable interpretation.

The King expressed his 'serious concern' at the circumstances which had caused such censure, but informed his daughter-in-law that it was no longer necessary for him to decline receiving her into the Royal presence.

Her reception at Court, however, was postponed, at the instance of the Prince of Wales, and Caroline prepared a counter-stroke. She had placed the hostile depositions, as soon as they were forwarded to her, in the hands of Spencer Perceval, who, with the assistance of Sir Thomas Plumer, and, as it was afterwards asserted, of Lord Eldon [2] himself, had prepared a skilful and powerful justification of her conduct thrown into the form of a letter to the King, bearing the date of October 2, 1806. On March 5, 1807, finding herself still excluded from Court, she addressed an ultimatum to the King, declaring that, as she had now abandoned all hope of being commanded to pay her duty in the Royal presence, the publication of the proceedings on the Delicate Investigation, hitherto most jealously guarded, would not be withheld beyond the following Monday.[3]

[1] July 14, 1806.

[2] That Lord Eldon had a share in the matter is difficult to credit in the face of his statement to Lord Grey, made in April 1813, and reported by Romilly (iii. 184). 'My opinion is and always was that, though she was not with child, she supposed herself to be.'

[3] Brougham declares (*Life*, ii. 74) that the King was desirous of publication in the hope that it would 'sound the alarm against Carlton House and the Whigs.'

Before the threat had been executed the Grenville Ministry was no more, and the authors of 'The Book,' as Perceval's pamphlet is commonly designated, had now the upper hand. The King's scruples disappeared.[1] A Cabinet minute of April 21 fully acquitted the Princess of all the charges against her, and desired that she should be received publicly at Court. 'The Book' was suppressed, stray copies of it were bought up on behalf of the Government at fancy prices, and an injunction against the enterprising editor of the 'Phœnix,' who advertised his intention of publishing the depositions, was moved for *in camerâ* at Lincoln's Inn, and granted by Lord Eldon.

As long as Perceval lived he was, in Brougham's words, 'her best, her most undaunted, her firmest protector;'[2] but after his assassination Caroline became more and more a pawn in the game of party politics. Hitherto her allies had been found among the Tories, for the simple reason that her husband was hand and glove with the Whigs. But when, at the end of the first year of the Regency, the Regent parted company for ever from his old associates, the Ministerialists, with one or two honourable exceptions, found that the society of the Princess of Wales had lost its former zest. The Whigs, on the other hand, now suddenly awoke to the infamous character of the treatment to which Caroline was subjected by her husband. Austere moralists like Mr. Creevey, who not long ago had vowed that 'Hal was the rascallest, sweetest young prince,' found themselves unable to tolerate the excesses of their former boon companion.

Since the months immediately succeeding her birth Princess Charlotte had never lived under the same roof with her mother. Neglected by her father, and encountering little sympathy or kindness at the hands of

[1] *Life of Brougham*, ii. 70.

[2] *Trial of Queen Caroline*, edited by Nightingale, ii. 11. This is the edition referred to throughout.

her grandmother, the old Queen Charlotte, she passed a desolate and unhappy childhood, and clung the more naturally to one who, 'with all her faults, had a warm and affectionate heart, and would have been a tender and affectionate, though perhaps not a judicious, mother.'[1] As she grew older, and the full extent of the breach between her parents could no longer be concealed from her, the little Princess became a keen partisan of her mother, a preference which only tended to make her own lot harder, and to bring down upon the Princess of Wales a renewal of slights and petty persecution.[2]

Towards the close of the year 1810 Brougham had been consulted by the latter at the request of the Princess Charlotte as to whether on attaining eighteen she would be in any way emancipated from her father's control.[3] His answer, of course, was in the negative; but from that date the two princesses practically placed the conduct of their affairs in the hands of Brougham and Whitbread. It must be confessed that the *rôle* assumed by Brougham in his own Memoirs of chivalrous and disinterested adviser to the Princess is scarcely borne out by the selection from his correspondence which Sir Herbert Maxwell has printed in the 'Creevey Papers.'[4] The tone in which he and his

[1] See an article on the 'Unpublished Letters of Princess Charlotte,' by Lady Rose Weigall, *Quarterly Review*, vol. cxxxiv. 1.

[2] While nothing can extenuate the conduct of the Prince of Wales towards his wife and daughter, it must be admitted that the behaviour of the former, and the general atmosphere of Kensington Palace, where the King had assigned her apartments, gave a handle to those who insisted that the less the daughter was exposed to such influences the better. Miss Berry (*Journal*, ii. 380), writing on May 31, 1809, of her first introduction to the Princess of Wales at an evening party, says, 'Such an over-dressed, bare-bosomed, painted-eyebrowed figure one never saw.' And later she records her general impressions (*ib.* ii. 389). 'Her conversation is certainly uncommonly lively, odd, and clever. What a pity she has not a grain of common sense, not an ounce of ballast to prevent high spirits, and a coarse mind without any degree of moral taste, from running away with her and allowing her to act indecorously and ridiculously whenever an occasion offers.'

[3] *Life*, ii. 141.

[4] i. 178 *et seq.*

fellow-candidate for Liverpool discuss the affairs of the unhappy 'Prinnies'[1] is positively revolting in its cold-blooded determination to 'keep the game alive,' and to extract the last ounce of party capital out of the misfortunes of the forlorn and unhappy women.

Brougham fought their battles with extraordinary skill, but with scanty benefit to his clients. The whole scandal of the Delicate Investigation was revived in 1813, and the book containing the vindication of the Princess of Wales was widely circulated. But her position was made not a whit more tolerable; her daughter was kept away from her more strictly than before; her friends in Parliament could do nothing. Except as a dexterous move to damage the Regent and the Government, there seems no justification for the whole proceeding. 'As for little P. in general,' wrote Brougham to Creevey, 'it is a long chapter. My principle is, take her along with you as far as you both go the same road.'[2]

In the following year Brougham's intervention was again invoked. The arrival in London, in June 1814, of the allied sovereigns and princes, several of whom were connected with her by birth or marriage, and for one of whom[3] her father had given his life, was made the occasion of fresh mortifications for the Princess of Wales. The Regent employed his utmost exertions in preventing the Royal guests from showing the most ordinary respect

[1] 'Prinnie' was the nickname by which the Prince of Wales was known to the young Ordes, Creevey's stepdaughters. 'Mrs. Prinnie' and 'young Prinnie,' or 'young P.,' were the terms applied to the Princesses by Brougham and Creevey.

[2] Creevey, i. 180, and see *Further Memoirs of the Whig Party*, by Lord Holland, 171. How far Brougham's interest in his young patroness was swayed by political and personal motives may be gauged from the following letter to Lord Grey, included by himself in the selection from his correspondence. 'That she is disposed towards popular principles I know from undoubted authority. The interest she took in Romilly's election and mine she was at no pains to conceal from anybody. T'other day she sent for a modeller and had a cast of me done; with a number of observations showing she feels a peculiarly strong interest in our side of the question.'

[3] The King of Prussia.

and civility to his wife, and he directed his mother to convey to her 'his fixed and unalterable determination not to meet the Princess of Wales upon any occasion, either in public or private.' The Princess replied in a dignified letter drafted by Brougham, in which she waived her rights 'in order to relieve the Queen from the painful situation in which she is placed.'[1] The exclusion from the Drawing-room found its sequel in the insults heaped upon the old Queen by the mob as she passed to St. James's. 'My lords,' she exclaimed pathetically, 'I be fifty years and more in this country, and well respected; but now I be shpit on.'[2] The Regent himself fared little better, and fresh fuel was added to his displeasure by an unexpected display of spirit on the part of the Princess Charlotte.

In the winter of 1813 the Princess had been betrothed, upon the shortest introduction, to the Prince of Orange, who had served on the Duke of Wellington's staff in the Peninsula, and was afterwards the cause of a melancholy sacrifice of valuable lives at the battle of Waterloo.[3] Reflection and closer acquaintance, assisted, it was rumoured, by the influence of the Duchess of Oldenburg, sister to the Czar, had destroyed whatever liking for the match she may have originally entertained. A tiff about a riding party is said to have precipitated the rupture,[4] and the Princess broke off the engagement. Another colour, however, is given to the affair in a letter from Mr. Creevey:

Whitbread has shown me Princess Charlotte's letter to the Prince of Orange. By God! it is capital. And now what do you suppose has produced this sudden attachment

[1] *Life of Brougham*, ii. 225; compare his letter in *Creevey Papers*, i. 194. 'I have made Mrs. P. go to the opera to-morrow evening, but without any row, merely to show she does not skulk.'

[2] *Life of Brougham*, ii. 215.

[3] See *Memoirs of Baron Ompteda*. The Prince's memory is perpetuated strangely enough by the Orange Dormitory at Wellington College.

[4] *Quarterly Review*, cxxxiv. 18, and *Further Memoirs of the Whig Party*, by Lord Holland, 199.

to her mother. It arises from the profound resources of old Brougham, and is, in truth, one of the most brilliant movements in his campaign. He tells me he has had direct intercourse with the young one; that he has impressed upon her this fact, that if her mother goes away from England, as she is always threatening to do, from her ill usage in the country, that then a divorce will inevitably follow, and thus the young Princess's title to the Throne be gone. This had an effect upon the young one almost magical.[1]

The fury of the Prince Regent knew no bounds. He rated his daughter with all the vigour of Sir Anthony Absolute, announced the dismissal of all the ladies of her household, and the substitution for them of others who were either total strangers or personally disliked by her. The daughter had more than a spice of her mother's temper. She quitted her apartments in Warwick House —a *dépendance* to Carlton House—absolutely unattended, took a hackney coach in Cockspur Street, and drove straight to her mother's residence in Connaught Place. Brougham was hastily fetched from the dinner-table of Michael Angelo Taylor,[2] and a council of war was held, to which the Duke of Sussex was summoned; while a rapid succession of coaches brought Lord Eldon, Lord Ellenborough, Sir John Leach, and her tutor, the Bishop of Salisbury, all of whom were received with scant ceremony and told to wait downstairs. Up above in the dining-room the Princess poured out her grievances, and her intention to remain with her mother. Brougham, according to his own story, acted with firmness and discretion. He listened while the young girl unburdened herself of her wrongs, and then told her that the only course before her was to return at once, and on no account to pass a night out of her own house. 'She was extremely affected, and cried, asking if I, too, refused to stand by her;' but the Princess of Wales, to her great credit, agreed. Finally, Brougham assured the unhappy daughter, 'in a very peremptory tone,' that the only

[1] *Creevey Papers*, i. 197.

[2] *Life of Brougham*, ii. 226.

question was whether she would go with goodwill or be forced by *habeas corpus*. 'She was affected beyond description. I have told many a client he was going to be convicted, but I never saw anything like her *stupefaction*.' [1]

And then he made his last appeal. The summer dawn was breaking as Brougham, drawing her to the window which looked out on Hyde Park, implored her, for the sake of the riot and the bloodshed which must inevitably follow on her obstinacy, to go home in peace. Princess Charlotte yielded, but with a characteristic flash of the Brunswick spirit insisted on one of the Royal carriages being sent for her; and before departing she made Brougham draw up a minute containing her declaration that she was resolved not to marry the Prince of Orange, and that if ever there should be an announcement of such a match it must be understood to be without her consent and against her will. This stroke was effectual; no more was heard of the alliance, and it was matter of general gossip at the clubs that, in Creeveyan phraseology, 'young Prinny had thrown over the Frog.' [2]

Princess Charlotte went back to her captivity in Carlton House to endure two years more of petty coercion and surveillance. Then followed a few months of happiness so great as to cover with oblivion the years of misery in which her girlhood had been spent, and then—

> Hark! forth from the abyss a voice proceeds,
> A long, low, distant murmur of dread sound,
> Such as arises when a nation bleeds
> With some deep and immedicable wound.
> . . . . . .
> In the sad midnight, while thy heart still bled,
> The mother of a moment, o'er thy boy,
> Death hushed that pang for ever.

[1] *Life of Brougham*, ii. 229, 235.

[2] Brougham's account of the scene in Connaught Place is flatly contradicted by Miss Cornelia Knight, the Princess's governess (see the *Quarterly Review*, cxii. 66 *et seq.*), but it seems to me to be difficult to dispute the main facts, unless the *Life and Times of Henry Lord Brougham*,

Shortly after the July night in Connaught Place Caroline took the fatal step of her life. Worn out by insult and persecution, 'baited,' as was said, 'like a bear at the stake,' she quitted England, early in August, on board the 'Jason' frigate. Her friends were divided as to the wisdom of her departure. Her daughter was bitterly opposed to it; while Canning held that, in view of her husband's hopeless and incurable alienation, she would best consult her own comfort by 'living either with her own family in Brunswick or in any other society in Europe, of which she might be the grace, the life, the ornament.' Brougham was furious; nothing could have suited his book less than to lose so potent an instrument for annoying the Regent. He was angry with her for accepting the offer of a handsome allowance from Parliament, angry with her for asking that the proposed sum might be reduced from 50,000*l.* to 35,000*l.* per annum, and still more angry at her dignified letter to Lord Castlereagh, in which she declared her desire to throw no unnecessary obstacles in the way to impair the peace of mind of the Prince Regent.[1]

I suppose you have heard, he wrote to Creevey, of Mother P. bungling the thing so completely, snapping eagerly at the cash and concluding with a civil observation about 'unwillingness to obstruct the Regent's tranquillity' . . . however, though she deserves death, yet we must not abandon her in case P. gets a victory after all.[2]

After a short visit to her brother at Brunswick she passed through Germany and Switzerland, across the Alps, and then, after lingering at Florence and Bologna, to Rome, and south to Naples, where Joachim Murat still held his Court. From Naples she was driven to

written by himself, is to be treated as waste paper. Unhappily, however, as we shall see in later pages, a good deal of so-called 'history' which rests on Brougham's uncorroborated evidence has proved to be utterly apocryphal (*vide infra*, 304, and *Edinburgh Review*, cxxv. 529 and 546).

[1] Miss Berry's *Journals*, iii. 31; *Annual Register*, 1814, 145.

[2] Creevey, i. 201.

retreat in confusion by the sudden news of Napoleon's return from Elba, and at Rome she found the British frigate 'Clorinde,' which carried her and her suite to Genoa, whence, after a short visit to Venice, she embarked on the 'Leviathan' man-of-war for Palermo. Here she remained for some months, quitting it on a polacca for a long voyage in the Mediterranean. She visited Tunis, Malta, Constantinople, and Ephesus, and eventually made a toilsome and somewhat dangerous expedition through Syria and the Holy Land.

Strange rumours of her actions gradually filtered over to England. One by one the original English members of her suite had left her, 'not so much from wrong doings,' adds Sir William Gell, 'as from ridiculous ones.' [1] The dismay of her friends and attendants is pictured in their correspondence; in leaving England she seemed to have cast off all common sense and conduct.

I am afraid, wrote Miss Berry, that the Princess of Wales is going to destruction; not an English attendant left, and the vile Italian cormorants are ruining her both as to finance and reputation.

Foremost among these natives of Italy was the courier Bartolomeo Bergami,[2] who, after a few weeks' service in that capacity, was promoted to be her chamberlain and her inseparable companion. 'Six feet high, a magnificent head of black hair, pale complexion, mustachios which reach from here to London,' was the summary of his personal attractions. A Milanese by birth, he had served as Quartermaster in an Italian regiment of Hussars, had been in Spain as confidential courier to General Pino, and had made the campaign of Russia. 'Napoleon's courier,' Caroline calls him in a letter to Miss Berry, 'which is quite a treasure to me, faithful and prudent. I shall keep him.' [3]

[1] ii. 78.

[2] The correct spelling of the name apparently was Pergami (*Trial*, iii. 689).

[3] Miss Berry's *Journals*, iii. 47.

No courtier under Tudor or Stewart sovereign could have sprung more rapidly into favour. His brothers were taken into the Princess's household; his sister, the so-called 'Countess Oldi,' was made Caroline's lady of honour; his infant daughter, the little Victorine, slept in her bedroom. The only member of Bergami's family, as it was significantly remarked, who was not introduced into her presence was his wife. The Princess procured for him a barony in Sicily and the Knighthood of Malta, and she instituted for him the Order of St. Caroline of Jerusalem, of which he was created Master.

The first definite report that Bergami had been raised from the place of a domestic waiting behind her chair to the dignity of chamberlain reached the Government through an official correspondence between the captain of the 'Clorinde' and Lord Exmouth, the First Lord of the Admiralty.[1] Then the captain of the 'Leviathan' reported suspicious circumstances with regard to the rearrangement of the cabin accommodation on board his vessels, and a crowd of stories relative to the conduct of this new-found Malvolio followed. By the autumn of 1817 a large mass of papers containing information from public and private sources was placed before Sir John Leach, who, as Chancellor of the Duchy of Cornwall, was the first law officer to the Prince Regent in his private affairs. Leach was supposed to be ambitious of filling Eldon's place in the new reign, which could not be long deferred, and he has always been credited with the responsibility for the proceedings against Caroline. He now advised that researches should be made in the countries where the Princess of Wales had travelled and resided. A commission of three was accordingly despatched to Milan: Mr. Cooke, K.C., of the Equity Bar, that famous lawyer who 'cited his book' when 'the Chancellor said I doubt;' Colonel Browne, of the Cavalry; and Mr. Allan Powell, a solicitor. They received their instructions from Sir John, but the

[1] Yonge's *Life of Lord Liverpool*, iii. 12.

Government paid all expenses and provided the necessary credentials.

The commissioners made their report on July 10, 1819, and it was immediately laid before the Cabinet, who drew up a minute expressing the opinion that the facts stated in the depositions would furnish sufficient proof of adultery 'provided they were established by credible witnesses.'[1] But they added:

> That this body of testimony consists almost exclusively of the evidence of foreigners, most of them not above the rank of menial servants, or that of masters and attendants in hotels, wholly unacquainted with the English language, and some of the former class standing in the questionable situation of having been dismissed or removed from her Royal Highness's service.

Brougham, though unaware of the precise nature of the evidence collected at Milan, was acquainted, he tells us,[2] with circumstances of great indiscretion on the part of the Princess, entirely unconnected with the charges which were subsequently formulated against her. He had been informed, moreover, on what he believed to be good authority, that since her daughter's death she had given up all wish to return to England. On the other hand, she was exposed to constant vexation at the hands of spies, and her husband left no stone unturned to lower her in the eyes of the various foreign Courts at which she visited. It seemed not improbable that she might accept an arrangement binding her to remain abroad, on condition of being allowed to take some royal title, of having her income secured, and of being properly recognised by the British Ministers on the Continent.

Acting on this assumption, but without committing the Princess herself, he proposed to the Government, through Lord Hutchinson,[3] that she should agree to a formal separation by Act of Parliament, should renounce

[1] *Life of Lord Liverpool*, iii. 28.
[2] *Life of Lord Brougham*, ii. 382.
[3] June 14, 1819; *Life of Lord Liverpool*, iii. 15.

the right to be crowned, should take the title of Duchess of Cornwall and have an income of 50,000*l.* settled on her for her life. It is by no means certain that the Princess would have ratified the proposal made on her behalf, and it was utterly unpalatable to the Regent, who would hear of nothing but divorce *a vinculo matrimonii*, and the power to marry again.[1] He pressed his Ministers to proceed to extremities, and was indignant at their lukewarmness. No formal answer was returned to Brougham, who found it as much as he could do to prevent the Princess from coming over to England in the course of the summer on business connected with her mother's will.

Affairs were in this condition when, on January 29, 1820, George III. died. George IV. was within an ace of succumbing to a violent attack of pleurisy during the first few days of his reign, but as soon as he was well enough to attend to business he reopened the subject of his matrimonial troubles. Ministers were obdurate on the subject of divorce; in minute after minute they enforced their view that any such proceedings, whether in the ecclesiastical courts or in Parliament, would be irregular and inadvisable, and that the alternative charge of high treason against the Queen for committing adultery when Princess of Wales could not be sustained. They acquiesced finally, however, after a succession of scenes in which their resignations were tendered more than once, in an exercise of the Royal Prerogative by which the King omitted his Consort's name from the Liturgy.

From that moment the situation was hopeless. The Queen was driven to fury at what amounted to a verdict of Guilty pronounced on her behind her back; a wave of indignation passed over the country, and she began to lose faith in Brougham as a counsellor and to fall under the influence of advisers far less experienced and without a tithe of his ability. The chief of these was Alderman

[1] Within a few days of the death of the Princess Charlotte it was rumoured in London that he had hopes of obtaining a divorce (Lady Granville, i. 132).

Matthew Wood, twice Lord Mayor, member for the City of London, and a useful friend to the recently deceased Duke of Kent. Brougham disliked and distrusted him, and was the originator of the nickname 'Absolute Wisdom;'[1] the dislike and distrust were fully repaid.

Events were too strong for Brougham; while he was using his utmost endeavours to keep the Queen abroad,[2] and was negotiating terms with Lord Liverpool, the alderman crossed France to meet her in the little Burgundian town of Montbardes, resolved to bring her to England at all hazards. Brougham had lost the golden opportunity when he failed to accept her invitation to come and consult with her in Geneva. By the end of May she was at St. Omer, accompanied by Bergami and her train of Italian attendants. Hither she summoned Brougham, whom she had already appointed to be her Attorney-General.[3]

He was firmly convinced that both on public and private grounds an investigation into the Queen's con-

[1] *Hansard*, 2nd series, i. 929. Denman took a more favourable view of the alderman's character: 'He unquestionably possessed uncommon perseverance and activity, no small share of natural sagacity, and much acquaintance with the character of the English people.' He was the father of William Page Wood, who afterwards became Lord Chancellor under the name and style of Baron Hatherley.

[2] I can find no corroboration for Creevey's statement that on the day of the death of the old King Brougham sent a letter to Caroline, 'giving her no choice but *commanding* her instantly to set out by land, and be at Brussels or Paris or Calais immediately.' Lady Charlotte Lindsay was of opinion (Miss Berry's *Journals*, iii. 235) that the Queen's object had been to alarm the Government, obtain a recognition at foreign Courts, and procure her settlement of 50,000*l.*, and that she had no intention of returning until she met Wood. But the affair of the Liturgy and the refusal of the Papal Court to accord royal honours had infuriated her.

[3] Lord Campbell (*Life of Brougham*, 297) has described how 'on the first day of Easter term Lord Chief Justice Ellenborough, who had conducted the Delicate Investigation, and had a very great dislike to Caroline and all connected with her,' duly called Brougham and his colleague Denman, the Queen's Solicitor-General, within the Bar. And he adds, 'I well remember the sarcastic smile with which this speech was accompanied.' At that time the Chief Justice had been dead for eighteen months (*ob.* December 13, 1818). Abbott, afterwards Lord Tenterden, was reigning in his stead.

duct was to be deplored; moreover, her income had ceased absolutely from the day of the old King's death, and the future provision for her rested with Parliament. At last George was induced to give his consent to a memorandum of terms by which an annuity of 50,000*l.* was to be settled on the Queen, conditional upon her never coming into any part of the British dominions, taking some other name than that of Queen of England, and 'abstaining from the exercise of any of the rights and privileges of Queen except such as related to the appointment of law officers.'

Armed with this ultimatum, Brougham started for St. Omer on June 3, accompanied by Lord Hutchinson as an unofficial representative of the Cabinet. The mission failed ignominiously. According to Hutchinson,[1] Brougham did not appear to possess the smallest degree of power or authority over the Queen. 'I think that her violence and determination subdued him, and that he failed in making the slightest impression upon her.' He did not deem it expedient even to allude to the existence of the memorandum which was in his pocket; but Lord Hutchinson stated to her the terms on which he knew that the King would insist, while explaining that he had no authority to make a definite proposition. These terms were essentially the same as those in Brougham's possession, save that by them the Queen was debarred from using any title attached to the Royal family of England.

Caroline immediately replied that it was impossible for her to listen to such proposals; she ordered horses to her carriage, and had left St. Omer for Calais before the negotiators had time to reconsider their position, taking no heed of two letters of protest from Brougham which followed her on the way. Before starting she had dismissed her Italian retinue, including Bergami,[2] with

[1] *Life of Lord Liverpool*, iii. 73.

[2] Bergami survived till 1841, and died of an apoplectic fit in a public-house at Fossombrone (Raikes' *Journals*, iv. 140).

whom she is said to have had a dispute over money matters; and it is remarkable that both Brougham and Lord Hutchinson bore witness to the complete propriety of their manners and behaviour.

Brougham has been bitterly assailed over these abortive negotiations, and critics have never ceased to harp upon

> the one marked stain on his conduct, for which he has never seriously attempted to account, the letter of pacification addressed to the Queen by the Ministers, entrusted to him for delivery and not by him delivered. Had its contents become known to her at the time, the whole course of events might have been different.[1]

Lord Hutchinson's account of the St. Omer meeting, however, which I have followed, affords a sufficiently complete explanation, and lays the exclusive blame on the 'rashness, presumption, and obstinacy of Caroline herself.' Brougham's own defence of his conduct, on the other hand, made a few days later in the House of Commons, is imperfect and unconvincing. But it is to be remembered that he was in a difficult position, and could not tell the whole truth without damaging his client by throwing the responsibility for the rupture upon her head.

Caroline crossed the Channel with Alderman Wood. Brougham had begged her 'to proceed in the most private and even secret manner possible,'[2] and had warned her that a contrary procedure would be hurtful to her dignity and full of danger in its probable consequences. The advice was spurned; she made a triumphal progress through Kent, and entered London at the head of a motley procession which made up in enthusiasm and quantity for what it lacked in quality. Wood occupied the seat of honour by her side, Lady Anne Hamilton sitting opposite. Among the more respectable of the mounted escort Denman recognised his 'bankrupt cousin, John Holloway; another was a sheriff's broker

[1] *Edinburgh Review*, cxxix. 584. [2] *Life of Brougham*, ii. 363.

well known in Courts of Justice.'[1] She drove straight to the alderman's house in South Audley Street, and from his balcony bowed her thanks to the assembled multitude. Her Solicitor-General, though disgusted with the whole surroundings, says that 'her step was assured, her bearing firm and graceful . . . nothing could be more noble or attractive than her manner, look, and gestures.'

Brougham had been so disgusted at the manner in which he had been treated by his Royal mistress that he was on the point of resigning his office as Attorney-General. But the precipitate action of Ministers rendered it impossible to do so without incurring the imputation of cowardice or treachery. On June 6, the very day of the Queen's arrival, Lord Liverpool presented to the Lords a message from the King announcing his wish to communicate to the House certain papers relative to the conduct of the Queen; and he laid upon the table the notorious green bag containing the depositions taken before the Milan Commission. On the following day he moved for a secret committee to examine, after the manner of a grand jury, and report whether they contained *prima facie* grounds for a Bill of Pains and Penalties against the Queen. The motion was agreed to without a division, but in the Commons matters did not go so smoothly.

Castlereagh had made a statement in the same terms as Lord Liverpool, and had produced a duplicate green bag. But when he moved for the appointment of a committee of enquiry, Brougham encountered him in all the panoply of war, giving Ministers a foretaste of the resistance which they were to expect. After reading a formal message from the Queen demanding an open investigation, he suddenly, and without warning, entered fully into the whole case.[2] He declared that it had been prejudged by the omission of the Queen's name from the Liturgy, by the refusal even of an answer to her applica-

[1] Arnould's *Life of Denman*, i. 145.
[2] *Life of Brougham*, ii. 367, 379.

tion for a place of residence suitable to a member of the Royal family, and by the studied slights both of the Ministers abroad and of the agents of those foreign Powers over whom the British Government had any influence. And he insisted that a careful investigation into the character of the witnesses against the Queen was the first preliminary to be taken.

The effect upon the House was electrical, and Wilberforce found no difficulty in adjourning the debate in order to concert some means of accommodation. For the next ten days negotiations were carried on between Castlereagh and the Duke of Wellington on the one hand and Brougham and Denman on the other. They broke down over the point that the full recognition of Caroline's rank and privileges as Queen must form the basis of any possible accommodation. But she was offered 50,000*l.* a year for life, the use of a frigate on her voyages, and an acknowledgment that she should be treated in foreign Courts with the honours due to the Queen of England. On the question of the Liturgy, Castlereagh said to Denman, 'You might as well move Carlton House.'

On June 22 Wilberforce moved for an address to the Queen, declaring that

> when such large advances had been made towards a final adjustment of these unhappy differences her Majesty, by yielding to the earnest solicitations of the House of Commons, and forbearing to press further the adoption of those propositions on which any material difference of opinion yet remains, would by no means be understood to shrink from enquiry.

Brougham replied with another slashing and uncompromising speech; and Denman met the Government suggestion that the Queen might consider herself comprised in the general prayer for the Royal family by the memorable words that, 'if her Majesty was included in any general supplication, it was in the prayer for all that are desolate and oppressed.'

The motion was carried by 391 to 124, but Brougham and Denman refused to lay the address before the Queen, and it was carried to her by Wilberforce, Sir Thomas Acland, and two other members, on June 24. She received them in stately manner with her counsel at her side, and read an answer which they had drafted for her.[1] As an accused and injured Queen, she refused to consent to the sacrifice of any essential privilege or to withdraw her appeal to those principles of public justice which are alike the safeguard of the highest and the humblest individuals.

Brougham afterwards declared that the decision was entirely the Queen's own, that he and Denman had declined to take the responsibility of advising her, and that he deeply regretted the course she had chosen. The rejection of the olive branch was the more humiliating to him that he had pledged himself to Wilberforce that the Queen would acquiesce.[2] The last chance of averting the public scandal had vanished.

His efforts had caused the abandonment of the secret committee in the Commons, but the one already appointed in the Lords pursued its work, and on July 4 reported that the charges against the Queen ought to become the subject of a solemn enquiry. On the 5th a Bill of Pains and Penalties, founded on their report, was introduced by Lord Liverpool. Formal proceedings were adjourned for a period of five weeks to allow of the preparation of the defence, and her Majesty's team of counsel was now finally selected. Besides Brougham and Denman, they were 'Johnny' Williams, an intimate friend of Denman's, Tindal, afterwards Chief Justice of the Common Pleas, Wilde, whom we shall meet again as Lord Truro, and Dr. Lushington, the most accomplished

[1] Denman's account (Arnould, i. 156) differs materially from that of Brougham (*Life*, ii. 376), and I have followed it as being compiled at the time. Brougham's chapters devoted to the affairs of the Queen and the Princess Charlotte are put together with such disregard of chronological order as to be scarcely intelligible in places.

[2] *Life of William Wilberforce*, v. 64–5.

civilian of his time. Towards him and towards Wilde Caroline felt the warmest liking. Brougham, in spite of his magnificent exertions and brilliant success, she never really trusted. This was largely due to the prompting of those about her, and especially of Alderman Wood, but there may well have been a further reason. The Queen's weak spot from the beginning was the coldness shown to her by her own sex. Ladies of the class satirised by Theodore Hook in 'Mrs. Muggins's Visit to Brandenburgh House,'[1] and by Thackeray in the person of Mrs. Gann, flocked to her humble residence in Portman Street, but the wives of the nobility, and of what are conventionally called 'the respectable classes,' stayed severely away. Lady Tavistock, indeed, and Mrs. Damer, were induced to call, but when the newspapers inserted the names of Lady Jersey and Lady FitzWilliam among her visitors, the announcement received a formal contradiction. Even more significant was the abstention of Mrs. Brougham.[2] And Denman begged his wife to refrain from calling till the wife of his leader had set the example, 'dreading that such scenes of vice and debauchery would be proved as would overwhelm with shame any woman who had formed acquaintance with the criminal.' Brougham was the only one of her counsel who at this stage knew the nature of the evidence collected at Milan, and he has admitted that he was aware of indiscretions unknown to the commissioners.[3]

[1] Have you been to Brandenburgh, heigh, ma'am, ho, ma'am ?
Have you been to Brandenburgh, ho ?
Oh, yes, I have been, ma'am, to visit the Queen, ma'am,
With the rest of the gallantee show, show—
With the rest of the gallantee show.

And who were the company, heigh, ma'am, ho, ma'am ?
Who were the company, ho ?
We happened to drop in with gemmen from Wapping
And ladies from Blowbladder-row, row—
Ladies from Blowbladder-row, &c., &c.

[2] Brougham had been married on April 1, 1819, to Mrs. Spalding, a widow, and the niece of the first Lord Auckland.

[3] *Vide supra*, 230.

It is clear from his Memoirs that he was extremely apprehensive of the disclosures that might be forthcoming, and we shall not be far from the truth if we accept as genuine the statement attributed to him during the course of the trial:

At first he did not think it possible she *could* be innocent. But the more the case had opened, the more had her innocence appeared, and now in his conscience he believed her guiltless.[1]

The Queen was too shrewd to be unconscious of what was passing in his mind, and too much of a woman not to resent bitterly the absence of Mrs. Brougham and Mrs. Denman from her drawing-room. But though she distrusted him at heart,[2] Brougham's genius, his cool-headed and skilful daring, and his overtowering personality were indispensable to her cause. His standing and position in Parliament gave him a weight such as no other man at the Bar possessed, and throughout the whole proceedings in the House of Lords he treated the Peers with as little deference as if they were a Yorkshire or a Lancashire jury. He neither showed nor felt the slightest awe of that august tribunal, and he managed to indulge to the full in sarcasm and invective without ever exposing himself to reprisals. From first to last he was faithful to his own somewhat peculiar conception of an advocate's duty, to know but one person in all the world, and that person his client.

To save that client by all means and expedients, and at all hazards and costs to other persons, and among them to himself, is his first and only duty. And in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others. Separating the duty of a patriot from that of an advocate, he must go on, reckless of consequences, though it should be his unhappy fate to involve his country in confusion.[3]

[1] *Life of Plumer Ward*, ii. 60.

[2] 'If my head is upon Temple Bar,' she once burst out to Denman, 'it will be Brougham's doing' (*Life of Denman*, i. 163).

[3] *Trial*, ii. 8.

CHAPTER XI

THE BILL OF PAINS AND PENALTIES—DEATH OF QUEEN CAROLINE

1820–1821

August 17 was fixed for the opening of the charges against the Queen. The accusation by a singular blending of judicial and parliamentary procedure took the shape of a Bill 'to deprive her Majesty Caroline Amelia Elizabeth of the Title, Prerogatives, Rights, Privileges, and Pretensions of Queen Consort of this Realm, and to dissolve the marriage between his Majesty and the said Queen.' The preamble set forth the engagement of Bergami in a menial situation, the commencement of an unbecoming and degrading intimacy between him and the Princess, and its criminal culmination. The technical duty of the counsel in charge of the Bill was to prove the truth of the recitals contained in the preamble, and on the 19th, after two days' preliminary sparring, the Attorney-General, Sir R. Gifford, opened the case against the Queen. With him were Sir John Copley, the Solicitor-General, James Parke, afterwards Lord Wensleydale, Sir Christopher Robinson, and Dr. Adams.

The House of Lords was crowded to its fullest capacity. The approaches had been barricaded with heavy wooden beams a foot square; a regiment of the Guards was posted in Westminster Hall, and the Household Cavalry and the City Light Horse patrolled the streets. Caroline had elected to be present, and an apartment had been prepared for her, communicating by a gallery with the judgment chamber. She arrived with a cheering mob at

COPLEY GIFFORD MAJOCCHI WILDE DENMAN LUSHINGTON BROUGHAM THE QUEEN EARL GREY

INTERIOR OF THE HOUSE OF LORDS DURING THE DISCUSSION OF THE BILL OF PAINS AND PENALTIES

her heels, who broke through the barriers as if they had been reeds, and only quitted her at the door of the House. She was accompanied by Lady Anne Hamilton, 'my Joan of Arc,' as her mistress called her, a lady of commanding stature and 'bearing a striking resemblance,' according to Creevey, 'to one of Lord Derby's great red deer.' In attendance were the Hon. Keppel Craven and Sir William Gell. Lord Eldon presided on the Woolsack, and Lord Chief Justice Abbott with half a dozen of his brethren sat below him to give their opinions when required upon questions of law and evidence.

If the Queen had intended to create a favourable impression upon the Peers, she had been unfortunate in her choice of means.

She wore a black dress, says one of her partisans, with a high ruff, an unbecoming gipsy hat with a huge bow in front, the whole surmounted with a plume of ostrich feathers. Nature had given her light hair, blue eyes, a fair complexion, and a good-humoured expression of countenance. But these characteristics were marred by painted eyebrows and by a black wig with a profusion of curls which overshadowed her cheeks, and gave a bold, defiant air to her features.[1]

Thus arrayed she took her seat in a chair placed for her in front of the Bar.

Gifford's opening speech was an oratorical failure; handicapped by a somewhat mean presence and a disagreeable voice, he was patently nervous and overawed by the importance of the occasion. His ignorance of foreign languages, of foreign customs,[2] and indeed of

[1] Lord Albemarle, *Fifty Years of My Life*, ii. 126; and compare the even less flattering description given by Creevey, i. 307. As an illustration of the trivialities which impress themselves upon the minds of spectators on great occasions, the late Lord Saye and Sele, the only eye-witness of these proceedings with whom I have conversed, could tell me little more than that the Earl of Liverpool wore the Garter outside his trouser.

[2] Sir Henry Holland (*Recollections*, 145) says that the want of familiarity with foreign customs shown by the lawyers on both sides led to

almost everything outside the technicalities of the profession in which he had achieved so remarkable a success, was little calculated to set him at his ease. But the story which he unfolded, however inartistically, was enough to spread horror and disgust among those who had hitherto been the staunchest adherents of the Queen. Even if decency permitted, it would serve no purpose to reproduce the details here: their parallel may be found in those nauseous records of the divorce court which our modern press reproduces with such amazing fidelity. The misconduct charged against the Queen ranged over the period from November 1814 to the autumn of 1817, and incidents bearing only one construction were alleged to have occurred at Naples, in Genoa, in Milan, at a host of smaller places in Italy and Tyrol, at Messina, at Syracuse, on board the polacca in the Mediterranean and throughout the tour in Syria and the Holy Land. When the Attorney-General sat down there was a general impression that the Queen's case was lost; nor were matters improved when the first witness, Theodore Majocchi, was placed at the Bar. He had been postilion to the Queen, and, as he was about to be sworn, his former mistress raised her thick white veil, looked fiercely at him, and then, exclaiming, 'Theodore! Oh, no, no!' she rushed, or rather bounced out of the House. 'Her clothes touched me as she passed,' wrote Campbell; 'she looked more like a Fury than a woman.'[1]

After she had departed Majocchi told his tale, and, if he could be believed, proved much more than was necessary to support the Bill. But Brougham's opportunity had come, and he subjected the witness to a tremendous cross-examination. The hour for the adjournment was reached before he had made much way; but he had discovered that Majocchi was a very illiterate

many curious mistakes. This can hardly apply either to Brougham or to Copley.

[1] *Life of Lord Campbell*, i. 385. A wrong date (October 9) has got appended to the letter.

and a very stupid witness with a tendency to ejaculate 'non mi ricordo' to any inconvenient question that might be put to him. The next morning, Brougham tells us:

I went to work as cautiously as possible, and after going to other topics I recollected an expression he had dropped in the former part of my cross-examination. It seemed to give me an opening, and I went back and got an answer which made me quite secure. I indicated my sense of the advantage I had got by some gesture which alarmed Denman, and he whispered words of caution; but I felt secure, and then poured question after question into him and got him to repeat his 'non mi recordo' as often as I chose. The story among us was that my rising taller, at the first opening the man gave me, put them in mind of the Duke of Wellington at Salamanca when he discovered that Marmont had left an opening in his line; and certainly the defeat of the Bill turned very much upon Majocchi's cross-examination.[1]

Indeed from that hour the foreign witnesses were comprehensively known as 'non mi ricordos,' and it was the weakness of the case against the Queen that out of the twenty-six witnesses called, every one, with the exception of a German chambermaid, Barbara Kress, a Swiss waiting-maid, Demont, and the two English post-captains, Briggs and Pechell, came from south of the Alps, from the country, as Brougham reminded the Peers, of Iago and Iachimo. The English officers, whose evidence had been so much dreaded,[2] spoke only to the position of Bergami in the Princess of Wales's household, which was common ground, and to the rearrangement of the sleeping accommodation on board the 'Leviathan.'

The Italians had been subjected to very rough usage on landing in Dover, and in the streets of London their lives would not have been worth five minutes' purchase. They were secured in a building known as Cotton Garden, which separated the two houses of Parliament, and was guarded by a strong military force on the street side,

[1] *Life of Brougham*, ii. 385; *Trial*, i. 80. [2] Creevey, i. 312.

and by a gunboat in the Thames.[1] Their personal appearance had been improved by new clothes and by soap and water, and when they appeared at the Bar they were no longer the swarthy, dirty-looking fellows in scanty ragged jackets who had run the gauntlet at Dover. Even so they were not a prepossessing body, menials who had been discharged from Caroline's service, innkeepers, boatmen, sailors, masons. They undoubtedly lent themselves to picturesque description.

Did their Lordships, asked Brougham, recollect the waiter from Trieste, Cuchi ?[2] But they could not forget his aspect if they had his name. Did they not recollect that physiognomy, the never to be forgotten expression of that face, those eyes, that nose, that lecherous mouth, with which the wretch stood there to repeat the falsehoods, the wicked suggestions of his own filthy imaginations, to which he had sworn at Milan ? Would they not for ever remember that hoary pander, the manner in which he told his story, the haggard look which gave him the appearance of an inhabitant of the infernal regions, and which must have reminded their Lordships of the great Italian poet's description of a broad-faced tailor in hell peeping and grinning through the eye of a needle ?

On the other hand, Lord Liverpool, writing to Canning[3] in September, declared that the Italian witnesses, even those of low condition, were, in the opinion of all the judges, superior to those in the corresponding classes of life who are usually brought before the tribunals in this country. There were only two, he added, whose credit or character was at all shaken. Of these Majocchi was one ; the other was Louisa Demont, who had given some very incriminating testimony ; her cross-examination by Williams has become a classic example in that art.[4] But, *pace* Lord Liverpool, the evidence as a whole

[1] Albemarle, ii. 127. The place was amply provisioned against a siege, and round it the London mob 'hovered from August till November, like a cat round the cage of a canary.'

[2] *Trial*, ii. 64. Cuchi's evidence will be found at i. 150.

[3] Yonge's *Life of Lord Liverpool*, iii. 107. [4] *Life of Brougham*, ii. 386.

emerged in a very draggled condition [1] from the withering interrogatives of Brougham and his colleagues, and it needed all the power and resources of Sir John Copley to set the case on its legs again. This task, however, the Solicitor-General discharged with consummate skill and with a moderation that was all the more deadly from its contrast with the perfervid indignation of his adversaries. And when, at the conclusion of his speech, the House adjourned for three weeks (September 9 to October 3) to enable the Queen's counsel to prepare her defence, the general feeling among the Lords and throughout the educated classes of the community was decidedly adverse to her Majesty.[2]

Even allowing that the Italian witnesses were perjured, and that every one of the specific acts of misconduct to which they had sworn was disproved, the mere fact of the honours and favours lavished on Bergami, the familiarity to which he had been admitted, and the utter want of decorum which had characterised Caroline's household, were enough to blast her reputation in English eyes. She had to pay for the utter disregard of conventionality and the reckless defiance of public opinion which were part and parcel of her nature. Those who take pleasure in shocking a world which they consider strait-laced have to bear the consequences, and high spirits pardonable in a girl of twenty wear a different aspect in a princess of five-and-forty. Caroline had dignity in abundance when she chose to exercise it, whether face to face with the hostile Peers or giving audience to her husband's subjects in a dingy Mayfair drawing-room.[3] But of that dignity which hedges the

[1] On September 23, 1820, Byron wrote to Hobhouse from Ravenna : 'Nobody here believes a word of the evidence against the Queen. The very mob cry shame against their countrymen, and say that, for half the money spent upon the trial, any testimony whatever may be brought out of Italy' (*Letters*, v. 79, Prothero's edition).

[2] E.g. Sydney Smith, *Correspondence*, ii. 200 : 'The Queen is contemptible ; she will be found guilty and sent out of the country with a small allowance, and in six months be utterly forgotten.'

[3] *Life of Lord Denman*, i. 149.

majesty of the throne in daily intercourse she had, throughout her troubled life, not the smallest conception.[1]

On October 3[2] Brougham made what is generally considered the supreme forensic effort of his life. Denman declared it to be

one of the most powerful orations that ever proceeded from human lips. His arguments, his observations, his tones, his attitude, his eye, left an impression on my mind which is scarcely ever renewed without exciting strong emotion. The peroration was sublime. Erskine rushed out of the House in tears.

That its influence on the audience was overpowering there is no room for doubt; but at this distance of time, and deprived of the scenic accessories, the extraordinary tension of public opinion, the fire, the gesture, the ringing tones of the great orator, it produces on the reader something of the effect which eloquence in general had upon Sir James Fitzjames Stephen, 'it resembles nothing so much as mouldy wedding cake.'[3]

[1] No better illustration can be afforded of her reckless and irrepressible sense of humour than the following extract from the correspondence of her own Chamberlain, Sir William Gell. 'If fate ever puts you in the way of the Princess of Wales,' he wrote to Miss Berry, who was then travelling with her sister on the Continent, 'make her tell you how the Empress Maria Louisa invited her to Parma—how the attendants dined in the outer room; and how, in full dress feathers, and velvet chairs with heavy gold legs and backs, the two ladies sat at a very long *tête-à-tête* before dinner at a fire. "You imagine it not very entertaining; I assure you very doll, I yarn and she de same; Mein Gott, I balance on my chaire mit my feet pon die fire. What you tink? I tomble all back mit di chair, and mit meine legs in die air; man see nothing more als my feet. I die from laugh, and what you tink she do? She stir not, she laugh not, but mit die utmost gravity she say, 'Mon dieu, Madame, comme vous m'avez effrayé.' I go in fits of laugh, and she repeat di same word witout variation or change of feature. I not able to resist bursting out every moment at dinner, and die to get away to my gens to tell die story. We all scream mit di ridiculousness of my situation." ' (Miss Berry's *Journal*, iii. 145.)

[2] Brougham's adjournment of the case to a date peculiarly inconvenient to the Peers showed, in the opinion of Creevey, 'his understanding to be of the very first order' (i. 169).

[3] *Nuncomar and Impey*, ii. 89.

Viewed as a defence of his client it is singularly unconvincing. It was the opinion of many, Denman among others,[1] that a skilful dissection of the evidence against Caroline, such as was attempted by Williams, and at a later stage of the case by Lushington, driving home the discrepancies between the evidence as it stood when it was opened by the Attorney-General, and as it stood when the witnesses had been heckled, would have brought the Bill to an abrupt termination. *Dis aliter visum.* Brougham flung all his energies and lavished his powers of sarcasm and invective upon the witnesses and upon the agents of the prosecution at home and abroad. He recapitulated in burning language the wrongs of the Princess of Wales in her early married life, the successive persecutions which had driven her from England and thrown her into society abroad, beneath her rank and dignity. And, at a date when the untimely death of the Princess Charlotte was still a vivid memory, he reminded his hearers how the Princess's mother had been deliberately allowed to learn the cruel news by accident.

The following are the closing words of the celebrated peroration, on which Brougham had displayed almost incredible labour and which to his dying day he regarded with a proud complacency :

My Lords, I pray you to pause. I do earnestly beseech you to take heed ! You are standing upon the brink of a precipice ; then beware ! It will go forth your judgment, if sentence shall go against the Queen. But it will be the only judgment you ever pronounced, which, instead of reaching its object, will return and bound back upon those who gave it. Save the country, my Lords, from the horrors of this catastrophe ; save yourselves from this peril ; rescue that country of which you are the ornaments, but in which you can flourish no longer, when severed from the people, than the blossom when cut off from the roots and the stem of the tree. Save that country that you may continue to adorn it ; save the Crown which is in jeopardy, the aristocracy

[1] *Life of Denman*, i. 169.

which is shaken; save the altar, which must stagger with the blow that rends its kindred throne. You have said, my Lords, you have willed—the Church and the King have willed—that the Queen should be deprived of its solemn service. She has instead of that solemnity the heartfelt prayers of the people. She wants no prayers of mine. But I do here pour forth my humble supplications at the throne of mercy, that that mercy may be poured down upon the people in a larger measure than the merits of their rulers may deserve, and that your hearts may be turned to justice.

Lord Campbell, who was present, says that

Brougham delivered the concluding prayer very solemnly and impressively in the well-remembered attitude of the Presbyterian clergy in Scotland, when they bless the congregation at the conclusion of public worship, raising both his opened palms above his head at the same height and holding them motionless till his voice ceased.[1]

To modern taste the appeal to the throne and altar may seem strained and unimpressive, and it was bitterly resented by the Peers at that time, who indeed were treated by Brougham throughout the whole case as little like 'ornaments' as it is possible to conceive. But there was no exaggeration in his warning, and at no period in the last century was the throne in greater danger than at that moment and during the weeks immediately following. The temper of the nation, not merely the mob of the metropolis, had been wrought to madness by the recital of the sorrows of the Queen. The great middle class was for her, to a man; there had been dangerous disaffection in at least one regiment of the Guards. The quiet country towns and the densely populated manufacturing districts were equally stirred, and from lonely hamlets, whither news of the outside world seldom penetrated, went up the same cry of indignation. Whether guilty or not guilty of the charges few cared, but the infidelity and the heartlessness of

[1] Campbell s *Life of Brougham*, 320.

HENRY BROUGHAM, ESQ., M.P.

The Queen's Attorney-General

Sketched by A. Wivell in the House of Lords, 1820.

her husband had made the proceedings in the House of Lords intolerably odious.

Brougham had abstained from enlarging on this prolific theme, but his language had been minatory and ominous. His lips were only closed, he intimated at the outset,[1] because the evidence against the Queen was so flimsy, but their lordships were warned that he reserved to himself the right, should the emergency occur, of using 'materials which were unquestionably his own.' This was no mere threat—and the King knew it—to rake up the stories of the Jerseys and the Conynghams and the long train of royal sultanas who had been the butt of a generation of caricaturists and lampooners. It was Brougham's intention, should he be hard driven, to impeach the King's own title to the throne by proving that he had married a Roman Catholic while heir-apparent and had thus, under the Act of Settlement, forfeited the crown, 'as if he were naturally dead.'[2] The marriage with Mrs. Fitzherbert, celebrated by an Anglican clergyman, the Rev. Robert Burt, in her uncle's house in Park Street on Dec. 15, 1785, is no longer a matter of conjecture but of history, and Brougham asserts that he had the means of proving it.[3] The Royal Marriages Act, of course, rendered the ceremony null, and it is at any rate open to argument that where the wedding was a nullity, there could be no forfeiture on account of it, but Brougham was convinced to the contrary.

The bringing forward, therefore, the marriage with Mrs. Fitzherbert was of necessity the announcement either that the King had ceased to be King, or that the other branches of the Legislature must immediately inquire into the fact of the prohibited marriage, or that there must be a disputed succession, or, in other words, that civil war was inevitable.'[4]

[1] *Trial*, ii. 7.

[2] *Life of Brougham*, ii. 407.

[3] 'We had her nephew, H. Errington, in the next street' (Brougham's *Letters to William Forsyth*, 64; *Life*, ii. 410). The whole story has at last (November 1905) been brought to the light of day by Mr. Wilkins in his *Mrs. Fitzherbert and George IV.*

[4] *Life of Brougham*, ii. 408.

Fortunately the course of events saved him from a step which no view of an advocate's duty, however strained, could have justified in the eyes of posterity.

Brougham was so satisfied with his speech and the impression produced on the Lords by his peroration that he wished to close the case there and then,[1] and thus avoid the necessity, which he had good reason to dread, of calling witnesses for the defence. He had abstained from 'opening his evidence' with an eye to this possibility, but he had declared his intention of producing one witness, a certain Mariette Bron, and he hurried downstairs to bring her before the Bar and tender her formally for cross-examination. But she could not be found, and accordingly Mr. Williams followed his leader. Indeed, as Denman says,[2] it was absolutely necessary that the evidence against the Queen should be sifted more closely. As for Mariette it was soon discovered that her conduct and her declarations made calling her quite impossible; and called she was not, in spite of Brougham's undertaking.[3]

The examination of the Queen's witnesses occupied sixteen days, from October 5 to the 23rd, and it did little to strengthen her cause. A number of highly respectable personages were called, who either had been attached to her suite or had met her at the various continental courts, Lord Guilford, Lord Glenbervie, Lord Llandaff, the Hon. Keppel Craven, Sir William Gell—'topographical Gell'—Mr. Anthony St. Leger, and Dr. (afterwards Sir Henry) Holland. They proved that there had been considerable exaggeration with regard to her behaviour in Italy and as to the English and foreign society which she kept, and on several important episodes the evidence of her English chamberlains contradicted the venomous tittle-tattle of Demont and others. But their testimony was mainly negative; they had seen no impropriety between Caroline and

[1] *Life of Brougham*, ii. 397. [2] *Life of Denman*, i. 170.
[3] *Life of Brougham*, ii. 396.

Bergami; but they had none of them been with her on board the polacca or in the Syrian journey; and, as a shrewd lady,[1] by no means hostile to the Queen, observes, you do not generally use respectable people as witnesses for such conduct as was imputed to the Queen.

The only female witness called on her behalf was Lady Charlotte Lindsay, a daughter of Lord North, who throughout her long life was one of the most amiable and attractive figures in the literary society of London. She appeared very reluctantly;[2] she had only been for a few weeks in Caroline's service in Italy as acting lady-of-the-bedchamber, but she had formed a strong opinion. 'Thank heaven,' she writes, 'I do not, from my own personal knowledge, know anything that can criminate the Queen.' But she could not bring herself to visit her former mistress:

> The conduct of her adversaries is giving her a boldness that can only be well grounded when it rests upon the sure foundation of a clear conscience; and those who have seen and heard much of her conduct for some years past can hardly entertain a hope that she has this foundation to rest upon.

Lady Charlotte's evidence was simply to the effect that she had never witnessed any undue familiarity between the Princess of Wales and Bergami, and that he had always conducted himself like a respectful servant. Cross-examined by Copley, she would not undertake to swear that she had not said that it was a vast relief to her mind to have come to the resolution of quitting her Royal Highness's service and that no woman with any regard to her character could remain in it. She complained bitterly that the Solicitor-General treated her as if she had been a murderer at the Old Bailey; and at one period she burst into tears, attracting general sympathy and a good deal of indignation. But her testimony was

[1] Miss Berry.

[2] See her journal in Miss Berry's *Correspondence*, iii. 235 *et seq.*

given with a degree of reluctance which necessitated a rigorous probing.[1]

The evidence of the Italian domestics and the other foreigners was, on the whole, favourable to Caroline. They disproved in many cases, and threw grave doubts in others on the most scandalous charges imputed to her; they damaged the reputation of a number of the witnesses for the Bill, and showed that the subordinate agents of the Milan commissioners had employed highly unscrupulous methods in collecting evidence. Officers who had served in various Napoleonic campaigns gave Bergami a character for capacity, courage, and faithfulness.

The great blow to the defence came from two English naval lieutenants, Flinn and Hownam, who had formed part of the Queen's suite on the polacca, the former of them acting as captain. They were both under great obligations to their mistress and were devoted to her cause. But they were remorselessly cross-examined by the Attorney- and Solicitor-General until Hownam admitted to the former that Bergami and the Queen had regularly occupied the same tent on deck,[2] and Flinn collapsed utterly while Copley was pressing him. 'I knew that he was lying,' the latter used to say in after years, 'and I looked hard at him. He fainted away and was taken out of court.'[3] . . . 'This cursed Flynn' (*sic*), notes Creevey, 'is still going on. He has perjured himself three or four times over, and his evidence and himself are both gone to the devil.'[4]

The blow to the Queen's cause was a very severe one. Place and opportunity, which modern judicial

[1] Sir Henry Holland mentions that during the progress of the case he was called in to three ladies who had been summoned as witnesses, and made ill by their apprehensions. 'Of these only one was examined, but in a way to justify her fears.' The explanation given by Lady Charlotte (Berry, iii. 258 *n.*) clears Colonel Lindsay from the imputation made by Creevey of having sold his wife's letter to Carlton House.

[2] *Trial*, ii. 294, 348.

[3] Martin, 187 *n.*

[4] *Creevey Papers*, i. 323.

SIR JOHN COPLEY

authority accepts as grounds for a decree nisi, had now been proved. But, indisputable as the inference might be in ninety-nine instances out of a hundred, I venture to suggest that Caroline's was the hundredth case. The entire want of propriety and of feminine delicacy, which was so prominent a feature in her character, may here, I think, be prayed in her aid, coupled with that disregard of all considerations of privacy in sleeping arrangements which even to-day is so common on the continent of Europe.[1] To share a tent with her courier, either on the polacca or in the ruins of some buried city in Asia Minor, would be, to her, a mere incident of travel which might afterwards furnish occasion for mirth in her careless chatter to 'her *gens*.' Such a consideration, however, was hardly likely to commend itself to the proud nobles of England, nor was it one which her counsel could venture to put forward.

Brougham was, indeed, in a serious dilemma with his witnesses. We have seen that he dare not call Mariette Bron ; and he was in an even greater difficulty as to the 'Countess Oldi,' Bergami's sister, who had been chief lady-in-waiting, who had been constantly referred to, and whom the Queen anxiously desired should be examined. Finally, Brougham assured himself in a personal interview that she must not be called, that her zeal for the Queen would make her 'lie without scruple and without bounds,' and that she would be an easy victim in Copley's hands. The Peers were left to draw their own inferences.

But now fortune played into Brougham's hands. One of the worst witnesses against the Queen had been

[1] Some confirmation of this view is supplied by the fact that 'Billy Austin,' her *protégé* and adopted son, slept in her bedroom till he was fourteen years old, and that the suggestion that he ought to be accommodated elsewhere proceeded eventually from her English attendants. Brougham declares (*Life*, ii. 425) that *this* 'Billy Austin' was not the sailmaker's son from Deptford who was the cause of the Delicate Investigation, but the child of one of her German ladies and Prince Louis of Prussia.

Giuseppe Restelli, the superintendent of her stables.[1] He had taken an active part in assisting the Milan Commission, and information had been elicited by the defence, unknown to them during his cross-examination, which tended to prove subornation of perjury on his part. There had been an understanding that the witnesses for the Bill should be kept together for further examination if required, but it had come to Brougham's knowledge that Restelli had been sent back to Milan on business connected with the trial.

On October 13 he put an apparently innocent question to the Attorney-General : [2]

Mr. Brougham.—I wish to know of my learned friend whether we can have access to Restelli. Is he here ? Is he in this country ?

No answer being returned

Mr. Brougham said, My Lords, I wish Restelli to be called.

The Attorney-General.—If my learned friend wishes to call Restelli, he certainly can call him.

Mr. Brougham.—I wish to know if Restelli is in the country, and, if in the country, where he is ?

The Attorney-General said that whether Restelli was in the country or was not, his learned friend must take the ordinary means to procure his attendance.

The Lord Chancellor.—Mr. Attorney, is Restelli here ?

The Attorney-General.—No ; he is sent to Milan.

Then, burst out Brougham, I wish to know, my Lords, whether, under these circumstances, I am to be obliged to go on with this Bill.

Lord Grey and Lord Holland bubbled over with indignation, and joined in the fray. There was really no defence ; the promoters of the Bill had speculated on Restelli returning in time, and the speculation failed. Days were occupied in investigating the matter, and it finally appeared that the responsibility for sending him out of the country rested with Mr. Powell, originally

[1] Mr. Reeve says (*Greville Diaries*, i. 37 *n.*) that he was an unimportant witness ; he must have forgotten the evidence.

[2] *Trial*, iii. 423.

one of the Milan commissioners, and now an agent for the Bill.[1] He was ordered to the Bar, and closely examined by the Peers. Counsel were asked whether they had any questions, and Brougham rose to the occasion. 'Who is your client or employer in this case?'

There were loud cries of 'Order, order!' For, while it had been one of the conventions of the proceedings that this was a measure promoted not by the King as an individual but by the Ministry, the latter on their part had affected to treat it as an ordinary private Bill, in which, by coincidence, the Attorney- and Solicitor-General appeared for an unnamed client. Brougham insisted that this was the first witness called who was able to supply them with the information. Hitherto they had been contending, day by day, without any specific party on the other side:

My Lords, if I knew who the party is against whom I appeared, *non constat* that I may not bring forward a mass of evidence furnished by himself. Again, my Lords, whatever be the name of this unknown, this interesting unknown, your Lordships see that, not knowing at present who this undiscovered being is, not knowing whether he have in truth 'a local habitation or a name,' not knowing whether this shadow may not vanish into airy nothing after he has eluded all sensible perception, I cannot fix him with any character.

And who, he demanded, who is the party? I know nothing about this shrouded, this mysterious being, this retiring phantom, this uncertain shape.

> If shape it might be called that shape had none
> Distinguishable in member, joint, or limb
> Or substance.

And such your Lordships will admit

> That shadow seemed,
> For each seemed either . . . .
> What seemed his head
> The likeness of a kingly crown had on.[2]

[1] *Trial*, ii. 463.

[2] The quotation from Milton (*Paradise Lost*, ii. 666) is said to have been suggested on the spur of the moment by Spencer Perceval (the Irvingite, and son of the murdered Premier), who was standing near Brougham (Greville, i. 38).

The thrust went home in a manner which Brougham declares he had never intended. Though verging on the sixties, George was more vain of his person and his figure than of anything else in the world. He protested indignantly and with real feeling that Brougham might at least have spared him the attack upon his *shape*. He declared to Lord Donoughmore 'that he thought everybody allowed, whatever faults he might have, that his legs were not as I had described them.' [1]

The Queen's witnesses dragged on till October 23, when Denman rose to sum up her case. His speech has been much admired for its passionate eloquence, though to my mind Dr. Lushington, who followed him, and who was accustomed professionally to this unsavoury sphere of usefulness, was more successful in dealing with the evidence than any of his colleagues. There were purple patches enough and to spare in Denman's speech, but its effect was grievously marred by two amazing indiscretions. Under pressure from Dr. Parr, the Whig Gamaliel, he quoted—in the original Greek, it is true—a passage from Dion Cassius, as inappropriate as it was indecent, which was generally accepted as imputing to the King the foulest vices of the Court of Nero.[2] Denman protested that he meant the comparison with Tigellinus for Majocchi, Restelli, Cuchi, and the rest of the crew; but the public would have it otherwise, and one is not surprised that George's resentment should have been all but implacable. Finally, with a maladroitness that is almost incredible, he closed his peroration with a reference to the woman in the Gospel of St. Mark—'Go, and sin no more.' No wonder that the town re-echoed with the over-quoted epigram—

> Gracious lady, we implore,
> Go away, and sin no more,
> And if that effort be too great,
> Go away at any rate.

[1] *Life of Brougham*, ii. 412.

[2] *Vide supra*, 58.

Then followed the Attorney-General in a speech which more than redeemed his initial failure. Closely reasoned, and covering the whole ground of this protracted enquiry, it marshalled the evidence for the Bill, and emphasised with deadly effect the omission of the defence to call witnesses who were actually in the vicinity of the House, and ought, on the hypothesis of the Queen's innocence, to have demolished many of the charges. Last of all came Copley, who brought all his powers of ridicule and satire to bear on the heroics of the defence, and tore from Denman's Neronian simile the sorry justification of novelty.[1] The comparison had already been made, he pointed out, in a work published a few weeks earlier by William Hone! Nor was he to be baulked of those classical allusions which had abounded throughout the case.

Capitolio,

he thundered—

Regina dementes ruinas
Funus et imperio parabat.[2]

And the following passage will afford a typical illustration of Copley in his lighter vein.[3]

In allusion to these alterations (at the Villa d' Este), his learned friend, Mr. Williams, stated to their lordships that the intention of the Princess in having one of her household near her was to guard against surprise, to remove her apprehension against the occurrence of any danger. His learned friend had laboured considerably to justify, upon this ground, the fact of Bergami's sleeping near the Princess's chamber. It might have been for her Royal Highness's protection against the plots which were preparing against her. Just so was the protection given by Sir Henry Hornby to the lady in one of

[1] *Trial*, iii. 438, 447.

[2] *Ibid.* 494. Sir John Taylor Coleridge (then just called to the Bar) was smuggled into one of the final consultations, and often spoke of the glee with which Copley announced that he had got a new quotation, and of the fire with which he declaimed these lines. Creevey's appreciation of the speech (i. 333) is a good specimen of his fairness to people he did not like, 'a more vulgar, bombastical, blackguard chap I never in my life heard.'

[3] *Trial*, iii. 447.

Foote's farces, in the dialogue between O'Donovan, the Irish chairman, and Mrs. Minnikin.

O'Donovan.—My lord was obliged to go about his affairs into the north for a moment, and left his disconsolate lady behind him in London.

Mrs. Minnikin.—Poor gentleman!

O'Donovan.—Upon which his friend, Sir Henry, used to go and stay there all the day to amuse and divert her.

Mrs. Minnikin.—How good-natured that was in Sir Henry!

O'Donovan.—Nay, he carried his friendship much further than that; for my lady, as there were many highwaymen and footpads about, was afraid that some of them would break into the house, and so desired Sir Henry to lie there every night.

Mrs. Minnikin.—Good soul! and he did, I dare say.

On November 2 the Chancellor moved the second reading of the Bill, which, after several days of heated debate, was carried by a majority of 28—123 to 95. But the position of Ministers was far from enviable. Even when the remaining stages had been disposed of in the Lords, it was certain that a most obstinate resistance would be encountered in the Commons. Brougham made no secret of his intention to exhaust every form and rule of the House to prevent the Bill from being even laid on the table,[1] and the whole of the evidence would have to be gone through afresh in an atmosphere far less hostile to the Queen.

But the Bill was not through the Lords yet, and a sea of trouble was before it. From its first introduction a number of Peers, including nearly all the bishops, had expressed extreme repugnance to the divorce clause, and early in the proceedings (August 19) Lord Liverpool had expressed his willingness to drop it. To pass the Bill in

[1] Brougham tells us that he and Denman were to have resigned their seats so as to obtain freedom of action. It is difficult to see how the Law officers could have conducted the case before the Commons. The Bill would probably have been transferred to other counsel; see *Life of Lord Campbell*, i. 378.

this shape was, in effect, to enact that a person unfit to be Queen must remain the wife of the King; but so bitter was George's hatred for his wife that he was prepared to accept even this alternative rather than see the Bill abandoned. But when the division was taken in committee, the Peers who were opposed root and branch to the Bill voted for the divorce clause, which was carried by 67 votes—129 to 62. And on the third reading many of the Peers who had voted for the second reading in the belief that the divorce clause would be dropped found themselves confronted with a measure in which it was inextricably incorporated. There were 108 for it, 99 against—a majority of nine only. Lord Liverpool arose in his place and announced that:

in the present state of the country, and with the division of sentiment so nearly balanced just evinced by their Lordships, Ministers had come to the conclusion not to proceed further with the Bill.

It was accordingly carried, *nemine contradicente*, that the question be put on that day six months.[1]

The resolution of the Government was received with a storm of triumph throughout the country. Addresses of congratulation poured in upon the Queen and upon her counsel. London, Dublin, Edinburgh, and many of the chief provincial towns were illuminated.

> There was no house without a light,
> No face without a smile.

And probably no men rejoiced more than the Ministers themselves at being released from a task which was becoming every day more odious and more embarrassing. It fell to the lot of Brougham to announce to his Royal client the abandonment of the Bill. There was a scene of almost hysterical emotion in her room in the House of Lords, and Lady Charlotte Lindsay threw herself into

[1] *Trial*, iii. 728.

Denman's arms in a paroxysm of delight. The Queen begged Brougham to accept an additional honorarium of 4,000*l.*, to be divided between himself and his colleagues, an offer which, of course, he refused.[1] Then, 'after a short delay, she ascended her State carriage, and, weeping and in silence, proceeded to Brandenburgh House.'

Though Brougham was assisted by some of the most learned, the most eloquent, and the most courageous members of the English Bar, the main credit for Caroline's defence must always rest with him. There was no man then living, and, I think I may add, there has been no man since, who possessed the same union of qualities. The very irregularity and exceptional nature of the proceedings gave him a hundred opportunities which he could never have enjoyed at Nisi Prius. He took every objection which the law permitted, and many which it did not. He was perpetually on his legs, protesting, haranguing, and interrupting. He browbeat the witnesses; by word, look, and gesture he lavished defiance and sarcasm on the Peers. On one occasion Lord Exmouth, the conqueror of Algiers, claimed the protection of the House from the insulting gaze of the learned counsel, and Brougham made a point of always addressing the interpreter, a teacher of Italian named Nicolas Dorien, Marchese di Spineto, as 'marquess.' His vigilance was unceasing, his industry enormous, and though his tactical judgment was not unerring, and exposed him to some effective rejoinders, he showed great dexterity in availing himself of every topic of prejudice. He knew that the strength of his case lay out of doors, in the past treatment of the Queen, and in the life of her husband. In the famous words of Erskine, he was resolved to 'drag

[1] Brougham mentions as a curious illustration of Caroline's inconsistencies that, in spite of this lavish generosity, his official salary and that of Denman were unpaid at the date of her death. The regular costs of promoters and opponents of the Bill were paid by the Treasury (*Life of Denman*, i. 179).

him before the Court ; ' but neither his invective nor his even more terrible irony left a sting behind them to compare with Denman's unfortunate excursion into the classics.

Yet, though Brougham enabled Caroline to die a Queen, the main issue had gone against her—the majority of the Peers had declared her guilty. And when the hour of her victory was over, after she had returned solemn thanks at St. Paul's amidst densely packed streets and a vast following, who bore emblazoned on their banners ' The Queen's guards are her people,' the real ordeal began. She was the first lady of the land ; her Court should have been the centre of attraction, at any rate, to those Whig noblemen who had fought for her so zealously and had pledged their absolute conviction in her innocence. ' Ought we to visit her ? ' was the vexed question in many of the highest and the most exclusive households. But the admitted facts of Caroline's ' Wanderjahre ' were too much for the Whig ladies. A few came, a few more left their cards. There was a moment when the tide seemed to turn,[1] and then Theodore Hook struck in with ' John Bull.' Subsidised from some undisclosed source, written with an ingenuity and a knowledge of the dark places of society which was simply devilish, its avowed object was to ruin the Queen's cause and the remains of her reputation. Its lampoons in prose and verse bubbled over with a form of wit and humour which scandalised an age less squeamish than our own. Any lady who visited at Brandenburgh House found her own peccadilloes, if she had any, and, in default, those of her kinswomen to the third and fourth generation, laid bare under the thinnest of disguises. It was a brutal and unmanly form of warfare, but it succeeded.

On the rest of the story—on Caroline's waning popularity, on her squabbles with the Ministry, on her attempted entry into the Abbey on the Coronation day,

[1] Creevey, ii. 7, 13.

and her ignominious repulse—it is needless to dwell. Brougham had little communication with her after the collapse of the Bill. He fought her battles in the Commons and he tried unsuccessfully, before the Court of Claims, to establish her right to be crowned. He did his best to dissuade her from creating a disturbance at the coronation, but urged that, if she made the attempt, she must do it with her wonted firmness. For once in her life the Queen's courage failed her, and she flinched. Worst humiliation of all, she found that the mob had transferred its suffrages to her husband. Within a fortnight she died, some said of a broken heart, but readers accustomed to modern medicine will be more inclined to assign her death to the drastic vigour of the remedies resorted to.

Brougham saw her a day or two before the end, when the physicians still entertained a flattering view of the case; but she said to him: 'Oh, no, my dear Mr. Brougham, I shall not recover; and I am much better dead, for I be tired of this life.'[1] He was on Circuit when she died, but hurried up to London, and followed the funeral procession from Hammersmith to Harwich. The discreditable attempt to prevent the cortège from passing through the City was the cause of a desperate riot, and the coach in which Brougham sat by the side of Sir Robert Wilson was struck by the bullets of the Life Guards firing on the people.

The scene, at Harwich, he wrote,[2] was such as I never can forget, or reflect upon without emotion. The multitudes assembled from all parts of the country were immense, and the piers crowded with them, as the sea was covered with boats of every size and kind, and the colours of the vessels were half-mast high as on days of mourning. The contrast of a bright sun with the gloom on every face was striking, and the guns firing at intervals made a solemn

[1] 'This business has been more cared for as a political affair dan as de cause of a poor forlorn woman,' was one of her last sayings (Miss Berry, iii. 94).

[2] *Life of Brougham*, ii. 428.

impression. One of the sights, however, which most struck me, was a captain in the Royal Navy, who sat on the pier, and could not be persuaded to leave it ; he was deeply affected and wept exceedingly. Having been in her service, and employed then, and ever since, in dispensing her charities, he could not tear himself away. The crimson coffin slowly descended from the pier, and the barge that conveyed it bore the flag of England floating over 'Caroline of Brunswick, the murdered Queen of England,'[1] the inscription directed by herself

[1] The actual word was 'injured' not 'murdered.' The coffin-plate came afterwards into the possession of Dr. Lushington, and belongs now, I believe, to a member of the Denman family.

CHAPTER XII

CAREER OF LORD BROUGHAM FROM THE DEATH OF QUEEN CAROLINE TO HIS APPOINTMENT AS CHANCELLOR

1821–1830

BROUGHAM'S professional connection with the affairs of Queen Caroline did not terminate with her death. Some little time before that event he had filed, in his capacity as Attorney-General to the Queen, a criminal information for libel against a Lancashire clergyman, the Rev. Richard Blacow, who had disgraced his cloth by a brutal sermon preached on the Sunday after the Queen's procession to St. Paul's. The case was tried at Lancaster assizes, when the victim was cold in her grave. The defendant was convicted and sentenced to three months' imprisonment.[1]

A few months later he was called upon to defend Mr. Ambrose Williams, the proprietor of the 'Durham Chronicle,' for a libel upon the Durham clergy who had declined to allow the bells to be tolled in the cathedral, or in the city churches, on the news of Caroline's death. The offending article had declared, *inter alia*, that 'it was such conduct which rendered the very name of our Established clergy odious till it stinks in the nostrils.' But the members of the Durham Chapter were not all conspicuous for the moderation of their language, and Dr. Phillpotts, who was then one of their number, and was shrewdly suspected of being the instigator of the prosecution, had described the defendant in print as 'a miserable mercenary who eats the bread of prostitution

[1] See Campbell's *Brougham*, 330, and note.

and panders to the low appetites of those who cannot, or who dare not, cater for their own malignity.'

Brougham improved the occasion by adding to a pathetic eulogy on his late mistress a diatribe against the clergy of the Establishment which, for ferocity and biting sarcasm, has never been surpassed. He declared at the time that he never delivered a speech either in Parliament or at the Bar so completely to his own satisfaction.

I am even presuming, he said, that up to this moment not one of those individuals [1] has stept beyond the strict line of his sacred functions, or given the slightest offence or annoyance to any human being. I am taking it for granted that they all act the part of good shepherds, making the welfare of their flock their first care, and only occasionally bethinking them of shearing, in order to prevent the too luxuriant growth of the fleece proving an encumbrance, or to eradicate disease. If, however, these operations be so constant that the flock actually live under the knife ; if the shepherds are so numerous and employ so large a troop of the watchful and eager animals that attend them (some of them too with a cross of the fox, or even the wolf, in their breed), can it be wondered at if the poor creatures thus fleeced and hunted and barked at and snapped at, and from time to time worried, should now and then bleat, dream of preferring the rot to the shears, and draw invidious, possibly disadvantageous, comparisons between the wolf without and the shepherd within the fold ?

The Judge was the same Baron Wood before whom Drakard had been convicted ; [2] he again expressed his opinion on the character of the alleged libel with the same vehemence ; the jury, after much hesitation, found the defendant guilty of libel 'against the clergy residing in and near the City of Durham and the suburbs thereof.' Sentence was deferred, and a rule was moved for next term by Brougham to show cause why judgment should not be arrested, on the ground that the finding did not

[1] The Durham clergy. [2] *Vide supra*, 193.

agree with the information. No one appeared on the other side, and Williams went unpunished. It was generally believed that the Bishop of Durham had been reluctantly forced into the prosecution.

Brougham had only been called within the Bar as the Queen's Attorney-General, and his patent and the right to wear silk gown and full-bottomed wig had lapsed automatically. His professional position and that of Denman more than justified them in applying to the Chancellor for a renewal of their rank, but Lord Eldon was not the man to incur the Royal displeasure by pressing the claims of persons whose politics were abhorrent to him. Brougham resumed his place without the Bar, and there reaped, for a time at any rate, the reward of his renown. 'When next he appeared on the Northern Circuit the attorneys crowded round him with briefs that they might be privileged to converse with Queen Caroline's illustrious advocate.' [1]

In point of pocket he suffered little by the slight inflicted upon him, for he was still retained to lead in those causes where his special strength as an advocate lay. The real hardship fell upon those 'juniors' on the Northern Circuit who were above him in date of call, and whom professional etiquette forbade to hold briefs under him now that he was a mere stuff gownsman again; ten or twelve of his seniors, he declares, were thus thrown out of business. Finally, from deaths and promotions, only one silk, in the shape of Scarlett, was left on the Circuit, and Brougham was induced to renew his application to Lord Eldon [2]

in consequence of the injurious effects occasioned to others by my want of standing, especially on the Northern Circuit, the inconvenience to which clients are frequently subjected, and I may add recommendations from a high judicial quarter where those inconveniences are known.

[1] Campbell, *Life of Brougham*, 324.
[2] February 25, 1823. *Life of Brougham*, ii. 459.

To this letter no answer was returned, and the Northern Circuit had to get on as best it might until the Chancellorship of Lord Lyndhurst.[1]

Brougham could only avenge himself in the House of Commons, and he had no mercy on the Chancellor when occasion arose there, albeit his speeches were free from the venom which he had distilled for the Durham clergy, and even from the bitterness of his own attacks upon Eldon in previous years. The debate on the address at the opening of Parliament in 1825 gave him an opportunity. Catholic Emancipation, as we know, was an open question in Lord Liverpool's Administration, and Brougham asked the pro-Catholic members of the Cabinet why they hesitated to press it on their colleagues.

Of what are they afraid? What is their ground of alarm? Are they apprehensive that the result would be the resignation of any of their colleagues? Do they think that any one of their coadjutors, some man of splendid talents, of profound learning, of unwearied industry, would give up his place? Do they think he would resign his office? that he would quit the Great Seal? I think they greatly underrate the firmness and courage with which he bears and will continue to bear the burthens of his high and important station. In these qualities the noble and learned Lord has never been excelled, has never perhaps been paralleled. Nothing can equal the constancy with which he has borne the thwarts that he has lately received on the question of trade. His patience, under such painful circumstances, can be rivalled only by the fortitude with which he bears the prolonged distress of the suitors in his own Court; but to apprehend that any defeat would induce him to quit office, is one of the vainest fears, one of the most fantastic appre-

[1] The chief gainer was Serjeant Hullock, whom Brougham afterwards raised to the Bench. In the spring circuit of 1823, Mr. Justice Bayley proposed to obviate the practical inconvenience by exercising an ancient prerogative, and calling Brougham and John Williams within the Bar at Lancaster, where the whole assize business of Liverpool and Manchester was then transacted, thus giving them temporary rank within the boundaries of the County Palatine. But the scheme fell through.

hensions, that was ever entertained by man. In his generous mind, expanded as it has been by his long official character, there is no propensity so strong as a love of the service of his country. He is no doubt convinced that the higher an office, the more unjustifiable it is to abandon it. The more splendid the emoluments of a situation, the more extensive its patronage, the more he is persuaded that it is not allowed to a wise and good man to tear himself from it.[1]

Forced and over-elaborated as the sarcasm appears now, it produced loud cheers and laughter from the audience, and old Eldon confessed to his daughter that he could not help laughing at some of the jokes pretty heartily himself.

No young lady was ever so unforgiving for being refused a silk gown, when silk gowns adorned female forms, as Brougham is with me, because, having insulted my master, the insulted don't like to clothe him with distinction and honour and silk.[2]

There is a story that in the very thick of the proceedings against the Queen, and shortly before his speech on her behalf, Brougham was spending a quiet week-end at Holland House, and was discovered one morning in the breakfast room, not engaged on one of the innumerable recensions of his peroration, but redrafting the clauses of an Education Bill.[3] A comparison of dates throws difficulties in the way of the tradition. But the fact remains that during the early part of that memorable summer when Caroline's affairs were pressing upon him with a weight that would have absorbed the energies of ten ordinary men, he was trying to pilot through the Commons a Bill which contained the germs of the Education Act of 1870. We have seen that the Education Committee of 1816 had been diverted from its original course in the crusade after lost charitable endowments.[4] But its labours had brought together a vast

[1] Hansard, 2nd ser. xii. 63.
[2] Twiss, *Life of Eldon*, ii. 537.
[3] *Quarterly Review*, cxxvi. 58.
[4] *Supra*, 208.

mass of information on every aspect of the problem. Baffled in 1819 over the Act for the appointment of the Charity Commissioners, Brougham returned to the charge in 1820 with a Bill for the better education of the poor in England and Wales.

The industrial revolution of the latter part of the eighteenth century had brought into existence a population with which the existing machinery for imparting the elements of education was utterly unable to cope. Two generations had sprung up, untaught and uncared for; and the very moderate attempt made by the Factory Act of 1802 to secure for children employed in the mills some instruction in the elements of knowledge, and the principles of Christianity, had been denounced by the masters as oppressive, impracticable, and prejudicial to the cotton trade. The tide had turned before the nineteenth century was many years old. Lancaster and Bell had introduced their respective systems, and the National Society and the British and Foreign Schools Society had begun their labours. Things were very different in 1816 from what they had been in 1803, but still out of about 12,000 ecclesiastical parishes and chapelries in England, 2,500 had not the vestige of a school, endowed, unendowed, or dame; they had no more means of education than were to be found in the country of the Hottentots. Of the remainder 3,000 had endowed schools, and the rest relied entirely on unendowed schools, fleeting and casual.

By way of remedy Brougham proposed to plant a school wherever it was needed. In places where there was no school power was to be given to the Grand Jury, or the minister of the parish, or to two justices, or to five resident householders, to lodge a complaint at Quarter Sessions and to demand the building of a school and the endowment of a mastership. The expenses of the latter were to be defrayed from the county poor rate, of the former from the Consolidated Fund; and an effort was to be made to render a portion of the existing charitable

endowments available towards giving a better elementary education to the children of the poor. In the schools thus established the secular instruction was to be limited to reading, writing, and arithmetic, but at each new appointment of a master the parson was to fix the course of teaching according to the necessities of the parish.[1]

Here was the rock upon which Brougham split. He had decided that the Act ought to be worked through the clergy of the Church of England, largely influenced, as he told the House of Commons, by 'the alacrity, the zeal, the warm-heartedness which the Established clergy manifested for the education of the poor. . . . They were the persons whom Providence had appointed to assist in this great work.'[2] To them was given a power of veto on the schoolmaster chosen by the ratepaying parishioners, and the candidate for the post was required to be a communicant member of the Church of England.

These restrictions were highly unpalatable to the Dissenters, who found further cause for alarm in the provision that the children of Church of England parents should attend church, and that there should be a 'school meeting' to teach the Catechism to those who were willing to attend. It was true that the Nonconformist children were permitted to attend the churches or chapels of their parents, and that no form of worship was allowed in school hours except the Lord's Prayer and passages of Scripture 'without comment.' But to the Roman Catholics and to the Protestant Dissenters alike the whole scheme savoured of proselytism, and in deference to what Brougham never ceased to regard as their

[1] See for Brougham's scheme, and for much other useful information, *State Intervention in English Education*, by J. E. G. de Montmorency.

[2] This eulogy seems a little strange, proceeding from the denouncer of the Durham clergy. At a later date Brougham gave a somewhat frigid approval to the Church of England 'as being a quiet and somewhat lazy Church; certainly not a persecuting Church' (Creevey, ii. 66).

unreasonable objections, the Bill was withdrawn after reaching the Report stage.[1]

In the summer of 1822 the political situation was profoundly affected by the death of the Marquess of Londonderry, better known as the Earl of Castlereagh, who destroyed himself in a fit of insanity on August 12.[2] His lifelong rivalry with Canning had apparently been terminated by the acceptance on the part of the latter of the Governor-Generalship of India and by his retirement from the representation of Liverpool. But Canning had not yet sailed, and, after an interval of suspense, the King, to whom he had given offence over the Bill of Pains and Penalties, was induced to receive him as Lord Londonderry's successor both at the Foreign Office and in the leadership of the House of Commons.

Brougham's reflections on the suicide of the unfortunate Marquess are not pleasant reading. After some commonplace expressions of regret, he continues in a letter to Creevey,[3]

there are material advantages, and among them I reckon not the least that our excellent friends that are gone, and for whom we felt so bitterly, are, as it were, avenged—I mean

[1] There are some touches in his introductory speech which cast a curious light on the England of that day. 'No man, he believed, effected more good in his generation than a good parish schoolmaster. That class would not, however, be offended when he observed that they moved in an inferior station of life—and, their circumstances being contracted, to eke them out they were glad to practise a little land surveying or a little conveyancing. The more conveyancing they undertook, the better it was for his own profession, for their labours in that line generally brought plenty of grist to the mill in Westminster Hall. Sometimes they only occupied themselves in copying conveyances, which was a more harmless pursuit, and they were generally assisted by their pupils in that innocent amusement. In aiding in the correspondence of the fair, there was often employment for the epistolary taste of the village schoolmaster.'

[2] He had succeeded to the family honours in April 1821. The 'peculiarly odious form of blackmail,' to which Sir Herbert Maxwell alludes, existed only in the imagination of the unfortunate Marquess. The evidence as to his state of mind during June and July, and especially as to the delusions during the last few days of his life, is conclusive.

[3] *Creevey Papers*, ii. 44.

Whitbread and Romilly.[1] . . . He has left behind him the merry Andrew and the spinning Jenny[2] . . . the damaged Prig or the damaged Joker signifies very little.

And in the interval, before the Ministerial arrangements were completed, the hopes of the Whigs rose high; it seemed to their eager imaginations that dissensions in the Tory camp might bring them at last to that haven so fondly desired and so obstinately denied. On September 3 Brougham wrote to Lord Grey on 'the POSSIBLE event (as it certainly is) of either now, or some months hence, a negotiation being begun,' and discussed the composition of the future Whig Cabinet. His own claims to office he left entirely to the judgment of his correspondent, and he expressed himself as being willing to support the new administration unofficially, if the King's personal objections to him should prove a stumbling block.[3] Lord Grey replied on the 5th that, though it would be disadvantageous and even absurd to indulge in Cabinet making at this juncture, yet the management of the House of Commons must be

considered betimes, if they were to look at any possibility of being called on to form an administration. I am satisfied that the lead there must *really* and *effectively*, if not nominally, be in your hands; and this it can only be by your being a member of the Government. I should be the last man to advise you to give up the splendid and, what is more, the certain advantages which you must command in your profession. No advantage to a new Government could justify me in urging such a sacrifice. But it is not necessary. Lord Mansfield, Thurlow and Wedderburn were all in succession the chief supports of the administration with which they were connected. But in office you must be, or the Government, I am persuaded, could not go on.

[1] Both of whom committed suicide.

[2] Canning and Peel. Brougham's tussle with the latter over the Charity Commissioners Bill was still rankling, and there are further allusions to 'the low, miserable spinning Jenny.' The elder Sir Robert was one of the first to appreciate and apply the inventions of Arkwright.

[3] *Life of Brougham*, ii. 453.

It is evident that the Attorney-Generalship was destined for Brougham, a post which at that time would probably have satisfied his ambitions, though, as we shall see, it was indignantly rejected eight years later. Canning's entry into the Cabinet dissipated these dreams, and it was not long before he was brought into a sharp encounter with Brougham. Early in the Session, during a debate on the Catholic claims, the latter taunted him with preferring 'hard labour in England to honourable exile in India,' and declared that he had

> exhibited a specimen, the most incredible specimen, of monstrous truckling for the purpose of obtaining office that the whole history of political tergiversation could furnish.[1]

Mr. Secretary Canning started to his feet. 'I rise to say that that is false.' And, when called upon by the Speaker to withdraw the words, repeated that no consideration on earth should induce him to retract the sentiment. Brougham was equally obdurate, and under the existing code of honour it seemed that there could be only one termination to the incident. The pistol was still the 'ultima ratio,' even among statesmen of the highest rank; Canning himself had been 'out' with Castlereagh; a few years later there was a meeting between the Duke and Lord Winchilsea, and we have seen that Lyndhurst, when long past middle age, was on the point of demanding the usual satisfaction from Lord Melbourne.[2]

A motion was made by Mr. Bankes 'that the Right Honourable George Canning and Henry Brougham, Esq., be committed to the custody of the Serjeant-at-Arms,' while Mr. Wynn suggested that neither party should be allowed to quit the House until he had given his word of honour not to pursue the affair further. At last the disputants were brought to agree that the original provocation should be accepted in the 'Pickwickian' sense as affecting Canning's official, not his personal,

[1] Hansard, 2nd series, viii. 1091.

[2] *Supra*, 136.

character.[1] Brougham acted with dignity throughout the whole incident, but he did not escape from strictures on his patience under the lie direct. In the thirteenth canto of 'Don Juan,'[2] published a little later in the year, Byron enumerated among the guests at the country seat of the Amundevilles—

> Parolles, too, the legal bully
> Who limits all his battles to the Bar
> And Senate; when invited elsewhere, truly,
> He shows more appetite for words than war.[3]

The onslaught upon Canning was the more remarkable that neither in foreign nor in domestic politics was there any marked divergency between the two adversaries, and Brougham was already supposed to be not unwilling to come to terms with the all-powerful Minister. 'Why does Brougham make such love to Mr. Canning?'

[1] The *Pickwick Papers*, of course, were not published till 1836. It is Lord Campbell's suggestion (*Life of Brougham*, 342) that the reconciliation in Mr. Sawyer's rooms in the Borough was taken from this 'scene in the House.'

[2] Stanza 84.

[3] This occasion was not the first on which Brougham's personal courage was called in question. In the original draft of the first canto of *Don Juan*, Byron had written some savage stanzas against him, adding an equally savage letter. They were both suppressed on the poet's own initiative, but have been printed in Mr. Coleridge's recent edition (vi. 67). A few lines will suffice:

> 'Twas a fine cause for those in law delighting,
> 'Tis pity that they had no Brougham in Spain,
> Famous for always talking, and ne'er fighting,
> For calling names, and taking them again;
> For blustering, bungling, trimming, wrangling, writing,
> Groping all paths to power and all in vain—
> Losing elections, character, and temper,
> A foolish, clever fellow, *idem semper*.

But Brougham's worst foes could not twist into an imputation against him his refusal to challenge a lunatic named Gourlay, by whom he was assaulted in the lobby of the House of Commons; see *Law Magazine and Review*, liii. 32 *n*. And his conduct when grossly insulted by 'Dandy' Raikes at Brooks's seems to have met with the approval of Creevey (ii. 106–9) and other punctilious members of that distinguished club-house.

wrote Miss Copley [1] to Creevey in March 1823; and it is from this date that 'Bruffam' begins to figure in his friend's correspondence as 'Wicked Shifts,' as 'the Arch-fiend,' and as 'Beelzebub.' But, whatever ambitions he may have been nursing, they were not allowed to impose restraint on his energies as a critic. In the debate on the Address in this same year he had delivered what Lord John Russell regards as one of his finest speeches, against the treatment of Spain by the members of the Holy Alliance, and against the proclamations of the respective Governments.

> Monstrous and insolent, and utterly unbearable as all of them are, I consider that of Russia to be more monstrous, more insolent, and more prodigiously beyond all endurance, than the rest. It is difficult to determine which most to admire, the marvellous incongruity of her language and conduct now with her former most solemn treaties, or the incredible presumption of *her* standing forward to lead the aggression upon the independence of all free and polished States. Gracious God! Russia! a power that is only half civilised, which, with all her colossal mass of physical strength is still quite as much Asiatic as European, whose principles of policy, foreign and domestic, are completely despotic, and whose practices are almost altogether Oriental and barbarous!

This freedom of language was by no means unacceptable to Canning, whose sentiments on the despots of Europe had now to be veiled in official language, and who rather liked to have some one to swear for him. But when in June of the following year Brougham moved a vote of censure upon the Demerara Government and the local judiciary, 'its instrument and accomplice in oppression,' Canning carried the previous question by 193 to 146. The case was that of Smith the missionary, who had been condemned by court martial on the charge of having contributed to a native rebellion. The whole

[1] Daughter of Sir Joseph Copley, and no relation to Lord Lyndhurst.

proceedings reeked of illegality and injustice; utterly inadmissible evidence was accepted against the prisoner, but, when he began his defence, he was told by the Court that '*for the future* hearsay evidence would not be received.' Though only charged with misprision of treason, which is not a capital offence, he was sentenced to death; confinement in a noisome tropical gaol rendered the hangman's task superfluous. An abolitionist from his youth up, Brougham regarded his attack upon the Demerara planters, for this and kindred enormities, as the event which made the continuance of slavery under the British flag impossible.

One of the Demerara debates, however, was marked by a ludicrous incident. He had been ill in bed most of the day, and had given orders to be called at five in the afternoon in order to be quite fresh for his reply. Before the discussion, however, had got fairly under way, it was discovered that a big balloon was hanging motionless over Palace Yard. There was a general exodus, and the House was counted out.[1] Theodore Hook has told the story in verse:

> The evening was bright, and the Doctor prolix,
> The House, being counted, contained twenty-six;
> So the Speaker rose up and cried, 'Good afternoon.
> Here, Ley, take my wig, I'll go see the balloon.'
> . . . . . .
> In both Palace yards all the Senators met,
> And, gazing on Heaven, its Cause they forget,
> Demerara, Smith, mission, creole, and quadroon
> Were eclipsed in a second by Graham's balloon.

Though, as far as parliamentary action was concerned, the cause of popular education lay dormant, Brougham was indefatigable in his attempts to do something for the enlightenment of those who stood without the charmed circle of the universities and public schools, and to provide means of self-improvement for the artisans

[1] Creevey, ii. 76; Hansard, xi. 1077.

and the lower middle classes whose political emancipation was not long to be delayed. He was alive to the necessity of educating his future masters, and in 1823 he issued as a pamphlet 'Practical Observations upon the Education of the People, addressed to the Working Classes and their Employers.' To his mind ignorance was disease, and useful knowledge the universal healer.

> Let the soldier be ever so much abroad; in the present age he can do nothing. There is another person abroad, a less important person, whose labours have produced this state of things. The schoolmaster is abroad, and I trust more to the schoolmaster armed with his primer than I do to the soldier in full military array.[1]

He co-operated with his old fellow-student, George Birkbeck, in the establishment of the London Mechanics' Institute, that parent of working-men's colleges and evening lectures. And his foundation of the Society for the Diffusion of Useful Knowledge was the beginning of a serious endeavour to drive vile literature from the field, to provide wholesome reading at a moderate price, and to present in popular dress the elementary facts of science. The success of the 'Penny' and the 'Saturday' Magazines, and of the 'Library of Useful Knowledge,' was assured from the first, though the tax on paper rendered the appearance of the volumes mean and the print unendurable to sensitive eyesight. The first publication of the society was Brougham's own volume 'On the Pleasures of Science.' Miss Martineau,[2] in an acrid passage, has expressed her conviction

> that his efforts for popular objects, even for education, were based on party and personal purposes; that he had no real desire that the citizen at large should have any effective political education.

[1] The occasion of this outburst was the debate on the Address just after the battle of Navarino; Hansard, xviii. 58.

[2] *Autobiography*, i. 309.

On the other hand, those who, like Thomas Love Peacock, stood by the ancient learning, had another crow to pick with him:

'God bless my soul, sir,' exclaimed the Reverend Doctor Folliott, bursting one fine May morning into the breakfast room at Crotchet Castle, 'I am out of all patience with this march of mind. Here has my house been nearly burned down by my cook taking it into her head to study hydrostatics, in a sixpenny tract, published by the Steam Intellect Society, and written by a learned friend, who is for doing all the world's business as well as his own, and is equally well qualified to handle every branch of human knowledge. I have a great abomination of this learned friend; as author, lawyer, and politician, he is *triformis* like Hecate, and in every one of his three forms he is *bifrons* like Janus; the true Mr. Facing-Both-Ways of Vanity Fair. My cook must read his rubbish in bed; and, as might naturally be expected, she suddenly dropped fast asleep, overturned the candle, and set the curtains in a blaze.'

In spite of detraction and ridicule Brougham's services in the cause of cheap, pure, and good literature will ever rank among his most honourable claims to the regard of posterity. A more enduring monument, however, is London University, which at last after eighty troubled years has been enabled to take the place in the scheme of national education which was assigned to it in the imagination of its projectors. With Thomas Campbell the poet rests the honour of the original idea, and the first public suggestion was contained in a letter from him to Brougham. But it required powers of a very different order to bring so revolutionary a project into accomplishment. Brougham's energy and pertinacity overcame all obstacles, and he succeeded in obtaining for his bantling the patronage of such Whig magnates as Lord Grey and Lord Lansdowne.

You have been the creator of this establishment, wrote the former in October 1828; and your name will be for ever united with the improvements which may spring not only

from this but from the rival College,[1] which never would have existed but for the success of your exertions.

Founded as a protest against religious tests, and regarded as the refuge of strange creeds and new-fangled 'ologies,' London University and its patrons were the target of much satire, good-humoured and the reverse. Imitating a more famous composition of Canning's, the author of the 'Ingoldsby Legends'[2] sent an ode to 'John Bull' to be performed at the opening of 'Stinkomalee Triumphans,' which concluded with the following stanza :

> To crown the whole with triple queue,
> Another such there's not in town,
> Twitching his restless nose askew,[3]
> Behold tremendous Harry Brough—
> Um ! Law Professor at the U—
> niversity we've got in town,
> niversity we've got in town.

And Theodore Hook[4] poured out a set of punning verses on the 'Cockney College,' of which the following are a sufficient sample :

[1] King's College, London ; see *Life of Brougham*, ii. 505.

[2] *Life of Barham*, i. 146.

[3] Brougham's nose, 'like a toe,' as somebody brutally called it, was a constant subject for mirth and caricature. He was said to punctuate his sentences with this organ, which he would turn up just at the end of a long parenthesis. *Inter alios*, Barham's poem contains a hit at the diarist, politician, and letter-writer whom Sir Herbert Maxwell has so recently disinterred :

> 'Since Michael gives no roast nor stew
> Where Whigs might eat and plot in town,
> And swill his port and mischief brew,
> Poor Creevey sips his water gru—
> El, as the beadle of the U—
> niversity we've got in town,
> niversity we've got in town.'

Michael Angelo Taylor (whose name must surely have suggested that of Michael Angelo Titmarsh) was the Amphitryon of the Whig party with whom Creevey, in the days of his poverty, was mostly wont to pitch his moving tent.

[4] *Life and Remains*, ii. 290.

To know his Plato soon will be the butler's chief ambition, sirs,
In equity our coachmen versed to drive shall cease ;
Fishmongers shall read from the Delphin large edition, sirs,
And poulterers on Turkey write with plates of Greece.
Butchers turned Aruspices shall bow to linkboy sages,
And accidence be studied by the drivers of short stages ;
Mantua-makers Virgil scan in numbers most harmonious,
And butcher-boys set down their trays to work at Suet-onius.

In the course of the year 1827 Lord Liverpool's 'political death,' and the consequent promotion of Canning, opened a new chapter for Brougham. The refusal of Eldon, Wellington and Peel to serve under the new Premier was matched by the haughty animosity of Lord Grey and the Duke of Bedford ; and Canning turned to those members of the Whig party who had no invincible personal prejudice against him. The result was the Coalition Ministry described in an earlier chapter. Brougham was at one with him in all matters of practical politics, for parliamentary reform, and the Catholic claims were shelved ; and the resignation of Peel, then regarded as the hope of the stern unbending Tories, had removed the last stumbling-block. He gave formal approval to the 'Junction,' promised his hearty and disinterested support, and moved across the House to what in Anglo-Indian phraseology was called the Hill Fort, in the corner where Pitt used to sit and lend encouragement to Addington.[1]

Brougham states that while political office was out of the question[2] he declined professional honours, a decision towards which he was assisted by the belief that he was still unforgiven at Court and that the crimes of 1820 were on his head. According to Creevey, he was disappointed at not being made Attorney-General. Canning is said to have pressed upon him the office of

[1] *Life of Brougham*, ii. 482, and see *Life and Letters of Zachary Macaulay*, 445.

[2] *Life of Brougham*, ii. 480.

Chief Baron with the suggestive remark that it was the half-way house to that of the Chancellor. 'Yes,' was the reply; 'but you deprive me of the horses that are to take me on.' [1]

Brougham afterwards asserted [2] that it was *his* promise of support to Canning which removed the last difficulty and led to Lord Lansdowne and Tierney taking office. He adds that, though Lord Grey both in letters and in conversation expressed strong aversion, 'he had no personal feeling whatever against those who made or those who approved the coalition.' This, however, was far from being the case. Lord Grey was bitterly incensed against Brougham in particular. Their correspondence ceased. And the veins on Lord Grey's forehead swelled as he 'snorted at Brougham's demand for justice to his disinterested motives' in refusing the post of Chief Baron.[3] Nor were matters mended by a report, which Creevey industriously brought to his patron's knowledge, that Brougham had circulated a story to the effect that Grey had declined to support Canning because his Ministry 'leaned too much to the people and against the aristocracy.' Angry recriminations followed, and Creevey denounced one of Brougham's letters as being inconceivable for 'low, lying, dirty, shuffling villainy,' an invective which was probably not unconnected with an allusion in the same letter to 'mischievous tale-bearers.' [4]

But Brougham had a knack of getting out of difficult corners, only equalled by his capacity for getting into them. The political situation shifted rapidly: Canning died in August, Goderich's Administration was at an end in the following January, the Whigs were back under the old banner, and Brougham became once more

[1] Roebuck, *Whig Administration*, i. 25 *n.*; *Life of Brougham*, ii. 511. The difficulty in the way of the story is that there was no vacancy in the office between 1823 and 1830.

[2] *Life*, ii. 480.

[3] Creevey, ii. 139.

[4] *Ibid.* ii. 149.

indispensable. It was not long before he had regained his old influence over Lord Grey and they were corresponding as freely as if no misunderstanding had ever existed.

In short, wrote Mrs. M. A. Taylor to Creevey, if Lady Grey does not prevent it, everything will be forgotten, but she and I perfectly agree about him, and I hope her influence will prevail.[1]

One definite gain had accrued to Brougham from Canning's accession to power, or rather from Eldon's consequent resignation. As we have seen, one of Lyndhurst's first official acts was to restore the silk gown so long and so unjustly withheld from him. The comparative ease with which the favour was obtained tends to discredit Eldon's asseverations of the King's implacability. The first circuit for a newly made leader is always a critical moment, and the struggle during the summer assizes of 1827 is recorded in a letter from Macaulay to his father:

At York Pollock decidedly took the lead.[2] At Durham Brougham overtook him, passed him at Newcastle, and got immensely ahead of him at Carlisle and at Appleby, which to be sure are the places where his own connections lie. We have not been here (Lancaster) quite long enough to determine how he will succeed with the Lancastrians. This has always been his least favourable place. He appears to improve in industry and prudence. He learns his story more thoroughly and tells it more clearly than formerly. If he continues to manage causes as well as he has done of late he must rise to the summit of the profession. I cannot say quite so much for his temper, which this close and constant rivalry does not improve. He squabbles with Pollock more than, in generosity or policy, he ought to do. I have heard several of our younger men wondering that he does not show more magnanimity. He yawns while Pollock is speaking,

[1] Creevey, ii. 184.

[2] Scarlett had just left the circuit on his appointment as Attorney General.

which, in their present relation to each other, he would do well to suppress. . . . The other day Pollock laid down a point of law rather dogmatically. 'Mr. Pollock,' said Brougham, 'perhaps before you rule the point, you will suffer his Lordship to submit a few observations on it to your consideration.'[1]

In spite of these outbursts Brougham was always popular on the Circuit, with those at least from whose rivalry he had nothing to fear. The Northern Bar mess has always been famous for conviviality, and Brougham could hold his own with the hardest topers; he was the first in all the mock ceremonial of the Grand Court, and his high spirits, chilled by no excessive regard for decorum, made him the idol of the younger men. If he is to be believed, his income at the Bar, when he finally quitted it, was over 8,000*l.* per annum.[2] His want of success with juries has, I suspect, been largely exaggerated; but Campbell embalms a saying of Tindal, that, whereas Scarlett had contrived a machine by using which, while he argued, he could make the judges' heads nod at his pleasure, Brougham had got hold of it, but, not knowing how to manage it, made the judges shake their heads instead of nodding them.[3]

In February 1828, while the dissensions among the Whigs were still only partially healed, Brougham moved in the House of Commons that a commission should be issued to enquire into the defects occasioned, by time and otherwise, in the laws of the realm, and into the measures necessary for removing the same.[4] It was perhaps the most striking indictment of our legal system which has ever been delivered by an English lawyer. Chancery and Lord Eldon had hitherto borne the brunt of the reformers' onslaught. Brougham took upon himself to show that in every department of our jurisprudence, in the common law, in the criminal law,

[1] *Life of Lord Macaulay*, i. 144.
[2] *Life of Brougham*, iii. 81. [3] Campbell, *Life of Brougham*, 351.
[4] Hansard, xviii. 127.

in the ecclesiastical law, in the shoals of the petty local courts, there were to be found abuses and anachronisms not less glaring or less productive of daily misery and injustice. Those of us to-day who may be inclined, in moments of irritation, to murmur with Mr. Bumble that 'the law is a ass,' may gain from this speech a picture of the heavy burdens under which our grandparents and great-grandparents carried on their existence. They may gaze in wonder

> at that series of penal statutes, the most bloody and inefficient in the world, at the puerile fictions which made every declaration and every plea unintelligible both to plaintiff and defendant, at the mummery of fines and recoveries, at the chaos of precedents, at the bottomless pit of Chancery.[1]

It is startling to be reminded how much of the barbarism of the fourteenth had survived into the nineteenth century.

Brougham spoke, according to Hayward, who timed him, exactly six hours and three minutes by the clock, and he exhausted a hatful of oranges, which were all the refreshment then tolerated by the custom of the House.[2] By the time he had reached the peroration he was faint yet pursuing; still his voice carried him through the sentences which, to my mind, are the noblest he ever uttered:

> It was the boast of Augustus—it formed part of the glare in which the perfidies of his earlier years were lost—that he found Rome of brick and left it of marble; a praise not unworthy a great prince, and to which the present reign also has its claims. But how much nobler will be the sovereign's boast when he shall have it to say that he found law dear and left it cheap; found it a sealed book, left it a living letter; found it the patrimony of the rich, left it the inheritance of the poor; found it the two-edged sword

[1] *Speeches of Lord Macaulay*, 26.
[2] *Quarterly Review*, cxxvi. 47.

of craft and oppression, left it the staff of honesty and the shield of innocence.[1]

This speech may be said without exaggeration to have led, directly or indirectly, to a greater number of beneficial and useful reforms than any other, ancient or modern, and its extraordinary wealth of detail may be recommended to those who are inclined to scoff at the qualifications of Brougham as an initiator of legislation. The immediate fruit was the appointment by Lord Lyndhurst of two royal commissions on the law of real property and on the procedure of the Courts of Common Law, while Peel's great work in the consolidation and amelioration of the penal code derived no small stimulus from the same quarter. There is a legend that a combination of attorneys on the Northern Circuit threatened Brougham with a professional boycott if he persisted in his schemes of law reform. He defeated the confederacy by publishing his intention of affording counsel and advocacy to such lay clients as should directly seek his aid.[2]

Brougham gave a warm support to the Duke of Wellington over the Catholic Emancipation Bill, and his general attitude towards the Government during the last days of George IV. was one of more or less friendly neutrality. But the Marquess of Cleveland had definitely ranged himself under the ministerial banner, and though he gave complete freedom of action to the occupants of his boroughs, Brougham felt scruples of which he disburdened himself at great length to the not altogether sympathetic ears of Lord Grey.[3] His acceptance from the Duke of Devonshire of the seat for Knaresborough vacated by the death of Tierney in January 1830 was a source of surprise and chagrin to the Marquess.

[1] An unfortunate misprint in the *Times* changed these words into the 'shield of the *insolvent*,' an error which, with regard to certain phases in the evolution of the modern law of bankruptcy, has just an unpleasant spice of truth about it.

[2] *Law Review*, xv. 383.

[3] *Life of Brougham*, iii. 25–31.

You have undoubtedly chosen, he wrote, a much younger and a far more influential patron than myself, but I deny that you can find one who is more sincerely attached to you.[1]

He was returned for Knaresborough on February 19. The ceremony was typical of the system. There were no resident voters, but the Duke of Devonshire's tenants, some forty in number, rode into the town, took from his attorney the deeds which made them electors by burgage tenure, chose the ducal candidate, came back to the attorney and surrendered the deeds. Then came the turn of the non-electors ; the newly chosen member had to be chaired through the streets, and woe betide him if, for any reason, he had incurred the dislike of the mob. Brougham happened to arrive too late for the ceremony and found the Duke's agent, who had represented him in the chair, engaged in covering the wounds on his head with a black patch ' as big as a serjeant's coif.' A certain William Stubbs, son of a Knaresborough attorney, and afterwards Lord Bishop of Oxford, tells us that he was privileged as a boy of six to wave the true blue flag in the face of the future Chancellor.[2]

Knaresborough did not retain its distinguished representative for long. Parliament was dissolved on July 24 by the death of George IV., and on June 23 a meeting of Whig freeholders at York had issued an invitation to Brougham to contest the county. The selection as candidate of a man who had no connection with Yorkshire save as a member of the Northern Circuit, and whose only recommendations were his talent and public services, was an event without precedent, and an astounding proof of the position which Brougham had conquered for himself. The supporters of the old *régime* might have recognised in it the writing on the wall.

A contest for the premier county was hardly less expensive than a small medieval war, but the invitation

[1] *Life of Brougham*, iii. 33.
[2] *Lectures on Mediæval and Modern History*, 3rd ed. 475.

to Brougham was coupled with an assurance that he would be put to no expense. The mere physical labour, however, of visiting so vast a constituency, in the major part of which he was unknown to the electorate except by name, might have deterred a less vigorous candidate. It soon became apparent indeed that his election was assured. Yorkshire, since the disfranchisement of East Retford, had received two additional representatives; and though there were five competitors for the four seats, one of them was known to be a candidate *pour rire*. None the less it was imperative for Brougham to make his canvass and to speak in the chief centres of the three Ridings. The election fell at assize time, the old Yorkshire assizes when business lasted for the better part of a month. Bench and Bar combined to help him in his candidature.

It so happened, he tells us, that I had an unusual number of briefs, some in very heavy causes. It was not possible either to give them up or to turn them over to my juniors. I was obliged, after a night of hard reading and preparation, to be in Court every morning by half-past nine o'clock; then I had to address the jury, to examine and cross-examine witnesses, in short to work for my various clients just as if there had been no such thing pending as an election. Then as soon as the Court rose, indeed sometimes before, I jumped into a carriage, and was driven, as fast as four horses could go, to the various towns, many of them twenty or thirty miles from York; at each town or considerable place I had to make a speech, never getting back to York till nearly midnight, and then I had my briefs to read for next day in Court. This kind of life lasted nearly three weeks. It was, by much, the hardest work I ever went through; but good health, temperance, and the stake I was playing for, carried me through.[1]

To the end of his days Brougham insisted that his return for Yorkshire was his most unsullied success, and that when, as knight of the shire, he was begirt with the

[1] *Life of Brougham*, iii. 40.

sword, it was the proudest moment of his life. In his speech on the conclusion of the poll he declared that he had more pride in representing Yorkshire than he could derive from any office in the power of the King to bestow. 'Nothing on earth shall tempt me to accept place.' His success was due to the memory of past services, to the repeal of the Orders in Council, to the defence of the Queen, and to the part which he had taken in the long struggle against the slave trade and against colonial slavery. A speech on that topic, delivered in the House of Commons shortly before the nomination, had helped him largely into the good graces of the old constituents of William Wilberforce.[1] He had at last attained that position in the Whig party to which his abilities and his past achievements entitled him. Out of doors with the public, who only knew him from his championship of the people's causes, he enjoyed a popularity which was insufficiently recognised at the time by the leaders of the Whig party, and is still less realised now. His election for Yorkshire revealed him as a potent force for which there is no parallel save the case of Mr. Gladstone after the successful issue of the first Midlothian campaign.

Parliamentary Reform had played a very subsidiary part in the election contests generally, but Brougham had declared on more than one occasion that henceforth he should stand forward as the champion of that cause, and would leave it in no other man's hands. Accordingly, on November 2, the first night of the Session, he gave notice of his intention to move a reform resolution on that day fortnight, an announcement which was received with a marked want of enthusiasm on his own side of the House. On November 13 he is alleged by Mr. Roebuck[2] to have communicated to Lord Althorp and a select few the outlines of his scheme ; but his own assertion that it was submitted to a general meeting of

[1] Hansard, xxv. 1131, and see *Life of Zachary Macaulay*, 454.
[2] *History of the Whig Administration*, i. 378.

the party is without any foundation.[1] Compared with the Bills of the following year, the proposals were modesty itself. Only five or six boroughs were totally disfranchised, but from all the 'close' or nomination boroughs, as well as from those 'open' ones, with a population below a certain figure, one of the members was transferred to the great towns. A strict system of registration was prescribed, all non-resident voters were disfranchised, the election for each contested seat was confined to a single day, and the duration of Parliament limited to three years. Such, at least, are the details supplied to Roebuck, and given by him in his 'History of the Whig Administration;'[2] but how much of it was communicated to Lord Althorp, how much of it was an afterthought, and even whether there was any definite scheme at all, is matter of profound uncertainty. Whatever were the facts the plan fell stillborn, for on the 15th the Government were defeated, and on the 16th they resigned, and Lord Grey was sent for.

When the House met that evening Althorp appealed to Brougham to postpone his motion. Brougham assented 'out of respect to the House,' but 'with the greatest reluctance;' and he added the following significant words:

> As no change that may take place in the Administration can by any possibility affect me, I beg it to be understood that, in putting off the motion, I will put it off until the 25th of this month and no longer. I will then and at no more distant date bring forward the question of Parliamentary Reform whatever may be the state of affairs, and whosoever may then be his Majesty's Ministers.[3]

The words themselves and the manner of their utterance made it plain that the speaker was affronted. During the course of the day Lord Grey had offered him,

[1] See article (Brougham) by Henry Reeve, in *Encyclopædia Britannica*, and *Life of Lord Campbell*, i. 486.

[2] i. 420.

[3] Hansard, 3rd ser. i. 563.

through the hands of Lord Duncannon, the post of Attorney-General, which he had refused contemptuously. With the 'pride that apes humility' he sent assurance to the Premier of his hearty and constant support as an independent member.[1] To those who knew Brougham the prospect of his independent support was scarcely less alarming than his open hostility, and he was pressed to say what office he *would* accept. In his heart of hearts he coveted the Leadership of the House of Commons, but Althorp's position was inexpugnable, and pride forbade him to formulate the request. He intimated that the Mastership of the Rolls would meet his requirements, but only to be told that that was impossible.

He has asserted,[2] and may have believed, that the objection proceeded from the King; but the matter never came before his Majesty at all. Lord Grey, it appears, was willing to have conceded the appointment, but Lord Althorp simply answered that if Brougham was left in Parliament in an irremovable office, the Administration would not last three months; 'and,' he added, 'I certainly will not belong to it.'[3]

The tension was not relaxed during the following day (the 17th), and it was clear that Brougham was not being admitted to the counsels of the Junto at Lansdowne House. That evening he went out of his way to make a speech hostile to the Government. There was a general impression in the House that he had resolved to forego all expectation of place, when, on the morning of the 20th, it was announced that he was going to be Chancellor.[4] With whom the idea originated is doubtful.

[1] 'He took the offer of the Attorney-Generalship, and held it up to the scorn of the assembled Commons of England, and tore it, and trampled upon it, and spat upon it in their sympathising sight, and lived to offer the cold-blooded aristocrat who had dared to insult genius the consoling compensation of the Privy Seal' (*Letters of Runnymede*, 33).

[2] *Life of Brougham*, iii. 77.

[3] Le Marchant, *Life of Lord Spencer*, p. 261.

[4] Brougham never re-entered the old House of Commons, burnt

Brougham's own story that the King suggested it is uncorroborated and improbable. We may not unfairly guess that the offer was only made when Grey had finally abandoned the idea of approaching Lyndhurst.[1]

In any case, the handling of Brougham showed an extraordinary want of tact and consideration. During these three days the seeds of suspicion and active dislike were sown in a singularly jealous and vindictive disposition, and they bore fruit in due season. For the moment, however, 'great was the surprise, greater still the joy at a charm having been found potent enough to lay the unquiet spirit, a bait rich enough to tempt his restless ambition.'[2] The reconciliation was consummated at a little dinner given by Lord Sefton, at which Grey was present, and where Montrond provoked much hilarity by asking the new Chancellor when he proposed to 'mount his bag of wool.'

Brougham's twice-repeated asseveration of his resolve not to take office may have been pique or bravado; but it was a very genuine sacrifice to abandon his profession, the representation of Yorkshire, and his unrivalled position in the House of Commons. To have refused the Great Seal would have appeared more glorious than to take it.[3] Denman is said to have been the person who finally induced him to accept, but his mother, a woman of rare sagacity, strove hard to dissuade him.

If, as is probable, she wrote, office is offered you in the new Government, pause before you accept it; do not be tempted to leave the House of Commons. As member for Yorkshire, backed by all you have done for the country,

down in 1834, and the first if not the only visit he paid to the present Chamber was in February 1860 to hear Gladstone's budget speech.

[1] *Vide supra*, 79. [2] Greville, ii. 65, and *cf.* Creevey, ii. 214.

[3] The story that Lord Althorp clinched the matter by saying that, if Brougham refused to join them, the Ministry could not be formed, and that the Whigs would be doomed to another long term of exclusion from office, rests on the authority of Brougham himself (*Life*, iii. 79), but it is confirmed by a letter in which Mr. Davenport Hill (*Memoirs*, 495) declares that he heard it from the lips of Lord Althorp.

you are more powerful than any official that ever existed, however high in station or in rank.[1]

It was, indeed, a position greater than any which could be bestowed by King or Minister, but it was incompatible with the working of party government.

When the new writ for Yorkshire was moved, Croker attempted to make party capital out of the sequel to Brougham's self-denying ordinance, and Macaulay vindicated the latter in vigorous language. It is not uncharitable to suppose that Macaulay was roused as much by dislike of Croker as by veneration for the Chancellor. Ungenerous jealousy of any possible rival had driven Brougham into secret depreciation and ostentatious neglect of the most brilliant writer on the staff of the Edinburgh Review, and Macaulay's disposition was not a peculiarly forgiving one.

I never will serve in an administration, he said to his sister a year later, of which he is the head. I do not believe that it is in his nature to be a month in office without caballing against his colleagues. He is, next to the King, the most popular man in England. There is no other man whose entrance into any town in the kingdom would be so certain to be with huzzaing and taking off of horses. At the same time he is in a very ticklish situation, for he has no real friends. Jeffrey, Sydney Smith, Mackintosh, all speak of him as I now speak to you. . . . If those who are called his friends feel towards him, as they all do, angry and sore at his overbearing, arrogant and neglectful conduct, when those reactions in public feeling, which must come, arrive, he will have nothing to return upon, no place of refuge, no band of such tried friends as Fox and Canning had to support him. You will see that he will soon place himself in a false position before the public. His popularity will go down and he will find himself alone.[2]

[1] *Life of Brougham*, iii. 80.

[2] *Life of Lord Macaulay*, i. 186, and see *Zachary Macaulay*, 450.

CHAPTER XIII

LORD BROUGHAM'S CHANCELLORSHIP DOWN TO THE PASSING OF THE REFORM BILL

1830–1832

LORD CHANCELLOR BROUGHAM took his seat on the Woolsack on November 22, 1830, but as Speaker of the House of Lords only, his patent of nobility not having been made out in time. The next day he was introduced as Baron Brougham and Vaux [1] by the Marquess of Wellesley and Lord Durham. The assumption of the subsidiary title was an act of vanity which first gave the world at large an inkling of the latent vein of eccentricity in his character. Even through the female line his claim to be a descendant of the Vaulx was of a shadowy nature; he never took any steps to establish his lineage, and the barony belonged, if to anyone, to Lord Dacre, whose present representative is Viscount Hampden. It is almost equally remarkable that he should have been blind to the inevitable crop of jejune pleasantries of which 'Vauxhall' and 'Vaux et præterea nihil' are the principal survivors.[2] To crown the whole he discarded the form of signature universally adopted by temporal

[1] Lord Appleby was the title by which his friends used facetiously to call him in the days of his electoral fights with the Lowthers.

[2] Even the Brougham family motto, *Pro Rege, Lege, Grege*, was not spared; *vide* the well-known lines of Tom Ingoldsby:

> 'From Sam. The Chancellor's motto; nay,
> Confound his puns, he knows I hate 'em.
> *Pro Rege lege Grege*, ay,
> For king read mob, Brougham's old erratum.'

We might add, for 'Sam' (Rogers) read Sir George Rose.

peers, and always signed himself H. Brougham or H. B.; the baptismal Peter he had dropped in early youth.

Two days later he was sworn in, in the Court of Chancery, amidst a concourse of Princes of the Blood, Whig noblemen, and foreign ambassadors. The crowded attendance of the general public was more than a mere personal compliment to the Chancellor. There was a genuine belief that the Augean stable was at last to be cleansed, and the accumulated *débris* of centuries swept away. Even the Duke of Wellington is reported to have said that Brougham was 'the only man with courage and talent to reform that damned Court.'[1] As to Brougham's energy, industry, and extraordinary mental capacity there could not be two opinions, nor as to his confidence in his ability 'to thaw the congealed mass of obstruction' which confronted him. His weakness lay in his imperfect acquaintance with the system which he was bent on reforming, and in his disregard of the necessary professional equipment. To a man of his powers, utterly unversed though he was in Equity practice, it would have been no inordinate labour to master in six months the procedure of the Court, and to ground himself at least in the law which he was called upon to administer. His mind was as vigorous as his will. Intricacies which would have baffled men of weaker calibre yielded up their secrets to him in an incredibly short time. He had a remarkable faculty of analysing and appreciating the authorities cited to him, and of applying their principle to the case in hand, and he was quick at unravelling a web of technicalities or exposing a sophistry.

Unhappily his motto was despatch regardless of consequences; to win applause by clearing off arrears rather than fame as a master of Equity was his ambition. He immensely underrated the character of the work before him, and the extent of his own ignorance. He took great pains with his considered judgments, in the preparation

[1] Le Marchant's *Life of Lord Spencer*, 289 *n.*; Creevey, ii. 218.

of which the gossip of the day asserted that he was largely helped by Mr. Preston, the conveyancer, but he would not undergo that systematic study of the books which alone could have qualified him for the thousand and one emergencies of his daily duty. 'Without labour and reading,' said Lord Lyndhurst to Greville, 'he cannot administer justice in this Court.' Nor was his want of reading made good by any close attention to the conduct of the business. Towards the end of his Chancellorship, at any rate, he became careless and heedless on the Bench, and it was common talk how he would write letters, correct proofs, read the newspapers, do anything, in short, but follow the arguments or listen to the affidavits. He vowed that his office was a mere plaything, that his life was too idle, and that when he had cleared off the arrears he did not know how he should get rid of his time.[1] But, however much he might protest, the consciousness that he was perpetually exposing himself to the comments of the exceedingly able counsel who practised in Chancery rendered him uneasy, and drove him into alternate fits of petulance and subserviency. His squabbles with Sir Edward Sugden in particular were frequent and notorious. He prided himself upon checking prolixity and keeping the speakers to the point; but he never succeeded in gaining either the respect or the confidence of his Bar, though the keener intellects found a combative pleasure in arguing before him when once his interest was aroused; and he ever displayed kindliness and consideration towards the younger men.

Yet with all these palpable defects, which unfortunately did not decrease with time, he accomplished an extraordinary work. By dint of sitting early and rising late, and by disregarding the vacations, he succeeded in exhausting the Cause Lists, and on two occasions at least he had to adjourn because there was no business to transact. He did what no one before him had achieved or attempted—he drove a great ventilating fan

[1] Greville, ii. 128.

through the Court of Chancery which, for the moment at any rate, swept away the cobwebs and cleared the air. The effect, indeed, was more apparent than real; the evils were only driven beneath the surface, and the essential abuses of the system were left absolutely untouched. None the less a new spirit was introduced into the realms of Chaos and Old Night. The jog-trot was accelerated, and the venerable practitioners received a shock from which they never entirely recovered. And Brougham's judicial exploits, which lost nothing either from his own account of his stewardship or from the echoes of his bodyguard in the Press, were of essential service to his party. They were noised abroad throughout the country, and they brought popularity to the Government at a moment when it was greatly needed. General l'Estrange, returning home to England early in 1831, enquired the news of the pilot who came on board at the Lizard.

> Brougham is doing wonders in the Court of Chancery, was the answer: he has decided more cases in the last three months than Eldon did in as many years. There never was such a man.[1]

To the lay mind it mattered little that his law should be impeachable, his decisions faulty, so long as 'racked minds were eased, and unsettled minds certified, and a vast amount of deteriorating property restored to use and good management.'[2] Sydney Smith declared that the 'iron mace of Brougham' had 'shivered to atoms the house of fraud and iniquity,' and that he had only to 'point his long, lean, skinny fingers, and abuses fall at his very gesture.' But in another respect he was a source of weakness rather than of strength to his colleagues. As Speaker of the House of Lords he was, from the very first, involved in a series of altercations with the Tory peers, which brought discredit on the whole assembly. Im-

[1] Le Marchant, *Life of Lord Spencer*, 289 *n.*
[2] Miss Martineau, *History of England*, ii. 162.

patient of contradiction, vitriolic of speech, regardless of convention and of the dignity of his office, he treated the barons of England, amongst whom he was now *primus inter pares*, as if they were an assembly of schoolboys, and he hectored and sneered with the same contempt for their susceptibilities that he had displayed when pleading the cause of Caroline of Brunswick at their lordships' bar. The victims of his sarcasm repaid him with a hatred which found vent almost nightly. He found himself the veritable Ishmael of the Peerage, and in those frequent encounters the honours of war did not always rest with the master of flouts and jeers.

Brougham having on one occasion, in a debate on Portuguese affairs, described Don Miguel as 'tyrannus quo neque tætrius, neque fœdius, nec Dis hominibusque invisius animal ullum cogitari potest,' the Marquess of Londonderry regretted that he could not rival the Chancellor in scholarship, but he would venture to apply to him the lines of Shakespeare :

> He doth bestride the narrow world
> Like a Colossus, and we petty men
> Walk under his huge legs and peep about.[1]

Another evening, when the printer of the 'Times' was at the bar of the House waiting to be reprimanded for a libel, the same noble lord, in his favourite character of *enfant terrible*, hinted that the Chancellor himself was responsible for the obnoxious paragraph. He drew down an indignant protest :

> Personally I have no objection to the noble Lord's course, so little do I dread its consequences. If I were the noble Lord's friend I should dread the consequences to himself. I care not one rush for what the noble Lord can say.[2]

Brougham would tolerate no approach to levity or indifference on the Opposition Bench. 'This is not the

[1] Hansard, 3rd ser. vii. 17 (September 14, 1831).
[2] *Ibid.* iii. 1703.

first time, my Lords,' he exclaimed, 'that I have been witness to a premature laugh.' Lord Farnham was told that he had opened a fire upon Ministers, not by platoons, but by a pop from his pop-gun; and Lord Eldon was charged with wasting the time of the House in irregular and disorderly discussion. His old antagonist, the Bishop of Exeter, he rebuked [1]

for frequent irreverent and offensive introduction of the name of the Supreme Being, of which no Peer of Parliament would presume to be so lavish as he was.[2]

Perhaps his favourite opponent was Lord Wynford, formerly Chief Justice Best, whose irascible temper and fondness for the sound of his own voice rendered him an easy and not unentertaining prey. Brougham would bring him to his feet in a passion by allusions to 'an inaccuracy which would have done honour to the late Chief Justice of the Common Pleas;' and the Chancellor's 'sharp and taxing' speeches goaded him into declaring that he would not submit any longer to be held up to ridicule, and into appealing to the standing orders of the House for protection.[3]

But no one knew when it might be his turn to come under the lash of Brougham's 'idle and unfounded censures,' as Lord Stanhope called them. He contrasted the Duke of Cumberland, as being illustrious by courtesy of the House, with the Duke of Wellington, who was illustrious by his actions.[4] When the Marquess of Salisbury rose to a point of order the Chancellor inter-

[1] Hansard, 3rd ser. xxiv. 298.

[2] Yet Miss Martineau, in describing Brougham at this very period, declares that in general society 'his swearing was so incessant, and the occasional indecency of his talk so insufferable, that I have seen even coquettes and adorers turn pale, and the lady of the house tell her husband that she could not undergo another dinner party with Lord Brougham for a guest' (*Autobiography*, i. 309).

[3] Hansard, xix. 357; for a particularly ungenerous attack on Wynford, over a slip made by him in giving judgment on a Scotch appeal, see Hansard, viii. 489.

[4] Hansard, xx. 590.

jected[1] 'that it would be a good rule if noble Lords, before they called others to order, would but condescend to catch a glimpse, some faint glimmer, of the meaning of those they interrupted.' And on another occasion,[2] when the Duke of Buckingham made a somewhat pointed allusion to 'pottle-deep potations,' Brougham furiously rejoined that the noble Duke was thoroughly conversant with the dialect of the ale-house which he frequented in order to enlarge the terms of his slang dictionary. Even the Duke of Wellington was not exempt from insolent contradiction; but Brougham was cautious in his outbursts, and when the Duke looked him in the face and warned him to be careful what he said next, the orator came to an abrupt stoppage.[3]

And his own indiscretions gave occasional opportunity for his adversaries to retaliate. In March 1831 London was ringing with the tale of how the Chancellor had driven his coach through the archway of the Horse Guards in spite of the assurances of the officers that it was not permitted, and the efforts of the men on duty to restrain him. This approach was the most convenient cut to the Queen's Drawing-room at St. James's Palace, and when he learnt that the *entrée* was possessed by the Speaker of the House of Commons, and even by the Chairman of Committees of the House of Lords, but not by the Chancellor, a milder-mannered man might have been angry. According to his own account in Parliament,[4] he accepted the situation, and told the coachman to 'go back,' whereat the latter 'drove on,' scattering the soldiers right and left; and his lordship was never more surprised in his life than when he found that his coachman had taken him through. But he told Creevey: 'When I saw *my own man*, my actual boot-jack,[5] had the privilege and not me, it was more than flesh and blood could bear.'

[1] Hansard, xxii. 1003.
[2] *Ibid.* xxv. 49.
[3] *Ibid.* xxii. 1008; Greville, iii. 232.
[4] Hansard, iii. 493.
[5] Lord Shaftesbury, the Chairman of Committees; see Creevey, ii. 222.

The next day it devolved upon him to deliver the rebuke of the House upon a certain Lieutenant Woodcock who had committed a breach of privilege in a letter to one of the Peers, a task he fulfilled with much unction. He had scarcely finished his solemn reprimand when Lord Londonderry brought before their Lordships the conduct of the Chancellor in 'forcing the King's Guard.' Brougham was driven to make a very lame defence, and to complain that the mischievous intervention of the noble Marquess had entirely obliterated the effect of his rebuke to Lieutenant Woodcock, as indeed the noble Marquess had intended.

But his enemies could find no cause for reproach in his activity as a legislator. As early as December 2, 1830, within ten days of his acceptance of office, he had introduced a Bill for the establishment of local Courts; a fortnight later he moved for a return of the number of lunatics under care of the Chancellor: 'the Chancellor's idiots,' as they used to be termed, following therein the precedent of a circular issued by Lord Lyndhurst. And he was known to be incubating a scheme for the reform of the Court of Chancery which he gave to the world on February 22, 1831. He admitted that, as yet, he was only an imperfect master of the intricacies of Equity, but he pleaded that delay would have the result of infecting him, as it had infected so many Chancellors before him, with the heavy air of his Court.

The chief innovation in Equity practice which he submitted to the House was the substitution of *vivâ voce* examination taken before a Master in open Court for the cumbrous and unsatisfactory procedure by interrogatory and answer; but he foreshadowed the abolition of many superfluous offices, the better regulation of others, and the substitution of fixed salaries for fees in the remuneration of the officials from the highest to the lowest. He was ready also with proposals for the care of lunatics and for the working of commissions of lunacy, and with a measure by which the jurisdiction in bankruptcy might

be placed in more competent hands and given something like uniformity and permanency in its lower branches. The whole plan, embodied in three Bills which were laid on the table in the course of this and the following session, involved the sacrifice of a good deal of patronage—though an ample store remained—and of some income, and his conduct was declared to be noble and disinterested even by Lord Winchilsea and Lord Londonderry, who, like others of the Peers, knew something of the nightmare of a Chancery suit.

Only the previous day Brougham had given the Lords a taste of his quality as a debater. His first purely political oration was over the Methuen treaty, when,

> without any preparation, he got up and, in answer to Strangford and Ellenborough, banged their heads together and displayed all his powers of ridicule, sarcasm, and argument.[1]

A country M.P., who had strayed into their Lordships' House, declared that Brougham put him in mind of 'Demosthenes or one of those fellows one reads about at school.' Greville, however, was convinced that 'notwithstanding his success he must inwardly chafe at being removed from his natural element and proper sphere of action, and he must burn with vexation at seeing Peel riot and revel in his unopposed power.'

Peel's days of rioting and revelling were fast drawing to a close. On March 1 Lord John Russell introduced into the Commons that first draft of the Bill for amending the representation of the people which has been already described.[2] The scheme had been prepared by Lord John in conjunction with Lord Durham, Sir James Graham, and Lord Duncannon, and when submitted to the Cabinet it proved to be a far wider and bolder measure than Brougham had contemplated. The purely nomination boroughs underwent complete extinction instead of only losing one member, 'and I am bound to admit,' was his verdict, 'that it was Schedule A that finally

[1] Greville, ii. 118; Hansard, ii. 760. [2] *Supra*, 86.

carried the Bill.' He claims to have taken a prominent part in the actual preparation of the Bill; and, on the advice of Serjeant Wilde, to have employed Mr. (afterwards Sir Barnes) Peacock to draw the clauses. Absolute secrecy was essential, and never was secret better kept, though Brougham declares that the outlines of the Bill were communicated by him to his brother James and to Sir Francis Burdett, to see what impression they produced upon the advanced Radicals.

While the Bill was encountering the full brunt of the Tory opposition in the Commons, the Chancellor, though in a condition of suspended animation, was by no means reduced to silence. Night after night he would present petitions in favour of the Bill from constituencies ranging all over the United Kingdom; the custom of the day allowed members to make speeches explanatory of the petitions with which they were entrusted, and Brougham, temporarily relinquishing the Woolsack for the Bar of the House, availed himself of this privilege to the full. Outside Parliament he was working every engine at his command, and they were many. The London Press, and more especially the 'Times,'[1] drew its inspiration and much of its information from him. A band of acute pamphleteers were at his beck and call, and he was by no means averse to employing his own pen in anonymous controversy. The musings of Jenkins and the meditations of Tomkins were the common vehicle for popularising the mature wisdom of the Chancellor. His craft and experience as a political organiser were in constant requisition, and he was in touch with all the 'leagues' and 'associations' which kept the agitation ablaze throughout the kingdom.

The defeat of the Government over General Gascoyne's amendment on April 19 made it clear that the balance of power was now with the Opposition. There were many uses to which their regained strength could

[1] In early days he had been a constant contributor to the *Morning Chronicle*, under the editorship of Mr. Perry.

be put, and one of these, it was certain, would be an address to the Crown against dissolving Parliament, which, unless the King proved staunch, might give him a pretext for changing his advisers. This the Cabinet resolved to forestall at all hazards; the consent of the King to an immediate dissolution was obtained by Lord Grey on April 21, and on the 22nd William IV. dissolved Parliament in person amid a scene of historic uproar and turmoil.

The details of this *coup d'état*, as furnished by Brougham to Roebuck, and preserved in the latter's 'History of the Whig Administration,'[1] are one of the strangest inventions that ever sprang from his imagination, prompt as it was in conjuring into existence the thing that was not and had not been; in point of audacity and circumstantiality it is almost worthy to rank with the French version of the sinking of the 'Vengeur.' According to this story the Chancellor and the Prime Minister only convinced the Sovereign on the morning of the 22nd that he must dissolve Parliament, *instanter* and in person, by a threat to resign; and even after this was accomplished the King had recourse to a series of excuses, and suggested every possible obstacle.

'But, my Lords, nothing is prepared; the great officers of State are not summoned.' 'Pardon me, Sir,' said the Chancellor, bowing with profound apparent humility, 'we have taken the great liberty of giving them to understand that your Majesty commanded their attendance at the proper hour.' 'But, my Lords, the crown and the robes and other things needed are not prepared.' 'Again I most humbly entreat your Majesty's pardon for my boldness,' said the Chancellor, 'they are all prepared and ready, the proper officers being desired to attend in proper form and time.' 'But, my Lords,' said the King, reiterating the form in which he put his objection, 'you know the thing is wholly impossible; the Guards, the troops, have had no orders, and cannot be ready in time.' This objection was in reality the

[1] ii. 148 *et seq.*

most formidable one. The orders to the troops on such occasions emanate always directly from the King, and no person but the King can in truth command them for such service; and as the Prime Minister and daring Chancellor well knew the nature of Royal susceptibility, they were in no small degree doubtful and anxious as to the result. The Chancellor, therefore, with some real hesitation, began as before. 'Pardon me, Sir, we know how bold the step is, that, presuming on your goodness and your anxious desire for the safety of your kingdom and happiness of your people, we have presumed to take—I have given orders and the troops are ready.' The King started in serious anger, flamed red in the face and burst forth with 'What, my Lords, have you dared to act thus? Such a thing was never heard of. You, my Lord Chancellor, ought to know that such an act is treason, high treason, my Lord.' 'Yes, Sir,' said the Chancellor, 'I do know it, and nothing but my thorough knowledge of your Majesty's goodness, of your paternal anxiety for the good of your people, and my own solemn belief that the safety of your State depends upon this day's proceedings could have emboldened me to the performance of so unusual, and, in ordinary circumstances, so improper a proceeding. In all humility I submit myself to your Majesty, and am ready in my own person to bear all the blame, and receive all the punishment which your Majesty may deem needful, but I again entreat your Majesty to listen to us and to follow our counsel; and as you value the security of your crown and the peace of your realms, yield to our most earnest solicitations.' The point was carried, the King cooled down and relented, and the Ministers were dismissed with something between a menace and a joke.[1]

A good deal of the amplification and embellishment of the narrative is Roebuck's own, but even the simpler story contained in Brougham's Memoirs is without foundation. It is contradicted not only by Lord Grey's correspondence,[2] but by the general consensus of con-

[1] 'He ever after, when in very high good humour, used to remind me of what he called my high treason' (*Life of Brougham*, iii. 116).

[2] The *Correspondence of the late Earl Grey with King William IV.*, i. 231; and see *Edinburgh Review*, cxxv. 530.

temporary evidence, to say nothing of its intrinsic improbability. No orders were issued for the usual State preparations, and it was agreed to dispense with them; a patrol of Life Guards was summoned from Whitehall; and the King is said to have declared his willingness to go down in a hackney coach if necessary. Many years earlier Brougham had written that Lord Strangford 'had a total want of that first-rate quality which gives a man's words the right to be believed.' Unhappily this is not the only occasion on which the phrase applies itself to its author.[1]

The dissolution was followed by the reintroduction of the Reform Bill in a second edition.[2] All the long summer months the Commons toiled away in committee while the Chancellor devoted himself to his judicial duties. On August 3 he was able to announce that he had now almost completed the arrears of appeals.[3] Only a few cases remained, and as a proof of his zeal he brought in a Bill empowering him to read affidavits and hear appeals after the last 'seal day' of term. The effect of this demonstration, however, was rather marred by Lord Eldon. Seal days, he pointed out, were mere matter of convenience; the Court of Chancery was open the whole year, and the Chancellor had ample jurisdiction to effect the change of his own authority, a fact which might have been gleaned from any Chancery practitioner.

He was soon afforded another opportunity for drawing attention to his own assiduity. The evening sittings which he had instituted in his Court had clashed with that regular attendance in the House of Lords which, under the Standing Orders, were required of its Speaker. Brougham vehemently justified himself. He had sat in Chancery from November 22, 1830, he protested, up to the

[1] Brougham himself always stuck to his guns, and assured Mr. Forsyth that a naval officer of his acquaintance had heard the story from William IV. Molesworth (*Hist. of England*, Preface and i. 122) remained also convinced 'upon the high authority of Lord Brougham.' No other authority, so far as I can ascertain, exists.

[2] *Supra*, 88.

[3] Hansard, v. 646.

present date, September 27, 1831; he had even sat on Good Friday and Easter Monday, the first Chancellor who had done so since the institution of that office.[1] 'Take care of the minutes and the hours will take care of themselves,' was his maxim, and, acting up to it, he had made it his constant practice to take his seat in Court as the clock was striking ten, and he continued to sit there until eleven or twelve o'clock at night.

Their Lordships came down to the House to discharge their duty in the evening, to hear the nightingale in the evening, but he had been up, hearing the raven in the morning.

On October 7 he made his great speech on the second reading of the Reform Bill, a speech in which he exhausted all his powers of sarcasm, of reasoning, and of declamation. Coming late on the fifth night, harassed by interruptions from the restless and angry Peers, and picking up the threads of all the scattered discourses that had gone before him, he raised the debate to the highest level, and his argument, with the possible exception of some of Macaulay's speeches in the Commons, is still the most effective statement of the case for the Reformers.[2]

The following extracts may give some idea, if not of the fire and force of his oratory, yet at least of the skill with which he made his points.

The noble Earl[3] complained that the Reform Bill shut the doors of Parliament against the eldest sons of Peers. . . . I have the happiness of knowing a young nobleman—whom to know is highly to esteem—a more virtuous, a more accomplished I do not know, nor have any of your Lordships, rich as you are in such blessings, any arrow in all your quivers of which you have more reason to be proud. He sat for a nomination borough; formed his own opinion; decided for the Bill; differed with his family—they excluded him from

[1] And the first judge to do so, said Sir Charles Wetherell, since Pontius Pilate.

[2] For an excellent summary, see *Law Magazine and Review*, liii. 311.

[3] Lord Harrowby, one of the 'Waverers,' to whose speech Brougham more particularly addressed himself (Hansard, viii. 236).

Parliament, closing against him at least *that* avenue to a statesman's best education, and an heir apparent's most valued preparation for discharging the duties of the Peerage. How did this worthy scion of a noble stock seek to regain the door thus closed and resume his political schooling? Did he resort to another close borough to find an avenue like that which he had lost under the present system, and long before the wicked Bill had prevented noble Lords from duly finishing their parliamentary studies? No such thing. He threw himself upon a large community—canvassed a populous city, and started as a candidate for the suffrages of thousands on the only ground which was open to such solicitation—he avowed himself a friend of the Bill. *Mutato nomine de te.* The borough that rejected him was Tiverton, the young nobleman was the heir of the house of Ryder,[1] the patron was the noble Earl, and the place to which the ejected member resorted for the means of completing his political education in one House, that he might one day be the ornament of the other, was no small rotten nomination borough, but the great town of Liverpool.

. . . . . .

That a Peer, or a speculating attorney, or a jobbing Jew, or a gambler from the Stock Exchange, by vesting in his own person the old walls of Sarum, or a few pigsties at Bletchingley, or a summer house at Gatton, and making fictitious, and collusive, and momentary transfers of them to an agent or two, for the purpose of enabling them to vote as if they had the property, of which they all the while knew they have not the very shadow, is in itself a monstrous abuse, in the form of a gross and barefaced cheat, and becomes the most disgusting hypocrisy when it is seriously treated as a franchise by virtue of property. I will tell these Peers, attorneys, jobbers, loan contractors, and the Nabob's agents, if such there still be amongst us, that the time is come when these things can no longer be borne, and an end must at length be put to the abuse which suffers the most precious rights of Government to be made the subject of common barter, to be conveyed by traffic, pass by assignment under a commission of bankruptcy, or the powers of an insolvent Act, or to be made over for a gaming debt.

. . . . . .

[1] Lord Sandon, Lord Harrowby's eldest son.

But the populace only, the rabble, the ignoble vulgar, are for the Bill! Then what is the Duke of Norfolk, Earl Marshal of England? What is the Duke of Devonshire? What the Duke of Bedford? (Cries of 'Order' from the Opposition.) I am aware that it is irregular to name any noble Lord who is a friend to the measure; its adversaries are patiently suffered to call Peers even by their Christian and surnames. Then I shall be as regular as they were, and ask does my friend John Russell, my friend William Cavendish, my friend Harry Vane, belong to the mob or to the aristocracy? Have they no possessions? Are they modern names? Are they wanting in Norman blood, or whatever else you pride yourselves on? The idea is too ludicrous to be seriously refuted, that the Bill is only a favourite with the democracy—it is a delusion so wild as to point a man's destiny towards St. Luke's. Yet many, both here and elsewhere, by dint of constantly repeating the same cry, or hearing it repeated, have almost made themselves believe that none of the nobility are for the measure. A noble friend of mine has had the curiosity to examine the list of Peers opposing it and supporting it with respect to the dates of their creation, and the result is somewhat remarkable. A large majority of the Peers created before Mr. Pitt's time are for the Bill. The bulk of those against it are of recent creation. And if you divide the whole into two classes, those ennobled before the reign of George III. and those since, of the former fifty-six are friends and only twenty-one enemies of the Reform. So much for the vain and saucy boast that the real nobility of the country are against Reform.

The famous peroration was somewhat marred by an unlucky piece of over-acting.

Beware of your decision, he implored the Peers. Rouse not, I beseech you, a peace-loving but a resolute people; do not alienate from your body the affections of a whole Empire. As your friend, as the friend of my order, as the friend of my country, as the faithful servant of my sovereign, I counsel you to assist with your uttermost efforts in preserving the peace and upholding and perpetuating the constitution. Therefore I pray and exhort you not to reject this measure. By all you hold most dear, by all the ties that

bind every one of us to our common order and our common country I solemnly adjure you, I warn you, I implore you, yea, on my bended knees I supplicate you, reject not this Bill.

With these words the Lord Chancellor knelt down on the Woolsack, and remained on his knees as if in prayer.[1] The atmosphere of the House is not congenial to such displays; and, moreover, the liberal potations of mulled port, 'laced' with brandy,[2] which had kept up the voice and strength of the orator for four hours had inspired his friends with apprehension; they crowded round him, lifted him from his awkward position, and replaced him on the Woolsack, as the House settled down under the spell of Lyndhurst's deep, melodious voice.

Their determination to throw out the Bill had been so well known that Brougham could hardly have been disappointed at the failure of his attempt to carry the Lords with him. The second reading, as we have seen, was defeated by a majority of forty-one. On October 12 Brougham uttered a solemn warning to the friends of reform to abstain from violence and outrage,[3] and on the 20th Parliament was prorogued. Among the measures which received the Royal Assent was the Chancellor's Bankruptcy Bill. By it a permanent Court of Review,

[1] 'Slightly bent his knee upon the Woolsack,' is the version of the writer in the *Law Magazine and Review*, liii. 312.

[2] Five tumblers of this stimulant were supplied to him, and as the fifth made its appearance a Tory Peer was heard to exclaim: 'There's another half hour good for us and be damned to him' (*Quarterly Review*, cxxvi. 48). Brougham's enemies did not scruple to charge him with constant intemperance, and, putting aside the hard-drinking days of his youth, there seem to have been occasions when, at any rate, he gave the impression of having exceeded: e.g. Mrs. M. A. Taylor wrote to Creevey (ii. 119) on June 1, 1827, that 'Brougham was very tipsy in the Penryn Case.' Campbell positively denies that he was guilty of anything like habitual intoxication. For some time prior to the Reform debate he had been suffering from an inveterate cough; see Hansard, vii. 658—'the kind and delicate invitation which he had received from a quarter to which he might not more particularly allude, and which enabled him to spend two days in the country for the recovery of his health.'

[3] 'Coax them, reason with them, tell them we want them to bark not to bite,' are the words put in his mouth by H. B. in the 'State Kennel' (*Political Sketches*, 161).

consisting of a chief judge in bankruptcy, three subordinate judges with jurisdiction in disputed cases, and six commissioners with jurisdiction in undisputed, took the place of the seventy itinerant commissioners, the Septuagint as they were sometimes termed, whose office had been the halfway house for so many struggling barristers. The Court of Chancery was relieved from some of the business which helped to choke it, but the law of insolvency was left untouched; and the personnel of the new Court was not conducive to its efficiency. 'Here we are, four by honours,' was the remark of Sir George Rose as he came up with his three colleagues to be sworn in as the first judges of the Court of Review.

The sacrifice of patronage, however, amounting to 17,000*l.* per annum, was loudly applauded in the country, and must be set to Brougham's credit against the repeated charge that he was not only covetous of power and patronage himself, but ever on the watch to usurp the patronage of others. He also succeeded in abolishing the sinecure Court of Exchequer in Scotland, and he introduced a Bill to regulate the proceedings and course of practice in the Master's office.[1] Brougham had lent his powerful aid, it may be mentioned, on behalf of the Truck Act,[2] and he had opposed with all his vehemence the amendments which the Commons, 'those wiseacres,' as he contemptuously termed them, had inserted in the Lunacy Bill, making it 'one of the most abominable pieces of legislation ever seen.' More dignified, and worthy of the best traditions of the Woolsack, was the language in which he announced his committal of Mr. Long Wellesley, M.P., for a contempt of the judicial powers of the House of Lords in removing his infant daughter from the custody to which she had been assigned.

[1] 2 & 3 Wm. IV. c. iii. In the following Session a number of Chancery sinecures and patent offices were swept away; and the Chancellor's retiring pension was raised to 5,000*l.* per annum.

[2] Yet in later years Brougham, as a convinced individualist, was a pertinacious opponent of the later Factory Acts.

Parliament reassembled on December 6, an earlier date than had been intended, but Brougham and Lord Althorp, made anxious by the continued anti-Reform riots in the country, prevailed over Lord Grey.[1] It was not until the last week in March 1832 that the third and final recension of the Reform Bill passed the Commons. And on April 13 the second reading was carried in the Lords. The outlook was threatening. On the one hand the country was in veiled insurrection, which the Chancellor did something to mitigate by a proclamation in which the political unions were informed that any attempt to play at soldiering would be suppressed by force, while in the House of Lords he declared that the projected refusal to pay taxes until the Bill was carried came within the meshes of the law of conspiracy. On the other hand, his interviews with the King had persuaded him that William would by no means be averse from a change of Ministry and an emasculated measure of reform carried through by a Tory Administration; while it was the obvious intention of a large party in the Lords to whittle away the Bill until it was substantially destroyed.

All doubts were set at rest by Lyndhurst's impetuosity. Lord Grey declared that the acceptance by the House of his amendment in committee postponing disfranchisement was fatal to the Bill.[2] On the next day, May 8, a Cabinet was held at which the Prime Minister and the Chancellor were deputed to present to the King the alternative of a creation of Peers or the resignation of the Government. As they drove down to Windsor it was agreed upon between them, according to Brougham's narrative, that sixty or possibly eighty new Peers would be required to ensure the passing of the Bill, and he declares that he had got ready a list of these proportions, based upon the principle of making the least possible permanent addition to the House. The King said he must take time for consideration, and the interview was at an end.[3]

[1] *Life of Brougham*, iii. 141. [2] *Vide supra*, 92.
[3] *Life of Brougham*, iii. 193.

Grey and I then set out, and, on our way home, had a wretched dinner at Hounslow, where he ate mutton chops, and I insisted upon a broiled kidney being added to the poor repast. He laughed at me for being so easy and indifferent, and said 'he cared not for kidneys.' Nevertheless he ate them when they came, and we were all in the printshops in a few days.[1]

The King's refusal and the exciting events of the next few days have been told in an earlier chapter. Brougham represents that the King was exceedingly reluctant to accept his resignation of the Great Seal and begged him either to remain Chancellor in a coalition or to accept the Government himself and carry a modified Bill. The promptitude with which his Majesty sent for Lord Lyndhurst is enough by itself to cast grave doubt on this, and Campbell asserts that 'such a preposterous conception never entered the Royal mind.'[2] An additional ground for rejecting the story is the King's intense dislike for Brougham, which afterwards became a passion, and contributed in no small measure to his political downfall.

Indeed, the prominence in the Royal closet which he attributes to himself in his memoirs was largely imaginary, and there is no historical warrant for the self-effacement with which he perpetually invests Lord Grey. Equal caution must be exercised with regard to his long and graphic account of the interview with the King on May 18, after the reinstatement of Lord Grey's Government.[3] Here, as always, Brougham takes the principal part; it is upon him that the onus devolves of extorting from his sovereign not only the promise 'to make such peers as *both* of us (and he dwelt upon this) should advise,' but the final concession of putting the promise in writing. The improbabilities of the story are so great as to require an authentication for it which it

[1] See H. B. *Sketches*, No. 198.

[2] Campbell, *Life of Brougham*, 408. How the author was acquainted with the secret thoughts of William is almost as surprising.

[3] *Life of Brougham*, iii. 199.

A LATE SCENE AT HOUNSLOW AT THE SIGN OF THE RED LION

has never received, and both the genuineness of the document printed by Mr. Roebuck and the existence of any written promise by the King are regarded with something more than suspicion.[1] Years afterwards Brougham wrote [2] that if the Lords had continued obstinate he doubted very much whether either Lord Grey or himself would not have abandoned the Bill rather than have availed themselves of the King's consent. But the game of brag succeeded, and the King's message to the Tory Peers ensured the safety of the Bill without forcing the Whig leaders to show their hand. The Royal assent was given on June 7, and the first reformed Parliament met on January 29, 1833.

Brougham was now at the very zenith of his fame. Among the newly enfranchised electorate he monopolised the popularity and authority of the Government. It was believed, and not unjustly, that to him more than to any single individual was due the victory of the people over the Crown, the territorial magnates, and the owners of the rotten boroughs. The high character of Lord Grey, the pertinacity of Lord John Russell, the fiery eloquence of Stanley, and the reasoned rhetoric of Macaulay had all played their part. But without the tremendous 'driving power' of Brougham, his wonderful resourcefulness, and his 'surpassing energy in trampling down all obstacles constitutional and unconstitutional,' [3] it is an open question whether the Reform Bill would have reached harbour. And it is to be further remembered that but for his Yorkshire election, and his language in the Commons just before he received the Seals, the flag of reform might never have been nailed to the Ministerial mast.

[1] Compare Roebuck, *Hist. of the Whig Administration*, ii. 331–333, with *Edinburgh Review*, cxxv. 545. There is a passage in one of Creevey's letters (ii. 230) which increases our hesitation in accepting Brougham's valuation of his influence at this crisis. 'The Chancellor vows he was not consulted as to the proposed batch of Peers, but says he won't put the Great Seal to their patents until he has been, and approves.'

[2] *Political Philosophy*, part iii. 308; *Life*, iii. 207.

[3] *Quarterly Review*, cxxvi. 48.

CHAPTER XIV

LORD BROUGHAM'S LAST DAYS AS CHANCELLOR

1833–1834

THE first Session of the Reformed Parliament was marked by at least three measures of the first rank: the emancipation of the slaves, a Factory Act, and the suppression of ten bishoprics in that Irish Church to which the repeal of the Catholic disabilities was to have brought strength and security. Brougham's own particular labours were not rewarded with equal success, and we have seen that the Local Courts Bill, after many vicissitudes, was finally lost on the third reading.[1] For one piece of legislation, however, the importance of which it is impossible to exaggerate, he is entitled to the exclusive credit.

Previously to 1833 all petitions to the sovereign from his subjects overseas had been heard by an open committee of the Privy Council at which all the members or any three of them might attend and advise the Crown as to the order to be made. Neither from the Plantations, nor from the Sudder Court of Bengal, nor yet from the Channel Islands and the Isle of Man, had the appeals been frequent. The Court sat seldom, and generally in the Vacation when such judges as were privy councillors could attend. But with the growth of the colonial and Indian Empire the flow of business became heavier and more constant, and the unsatisfactory nature of a quasi-professional tribunal more apparent. In 1832 the powers hitherto exercised by the High Court of Delegates in ecclesiastical and maritime causes had been

[1] *Vide supra*, 106.

transferred to the King in council.[1] Brougham now of his own initiative called into being the Judicial Committee of the Privy Council.[2] The hearing of appeals and the transaction of business of a judicial nature were henceforward confined to past and present Lord Presidents and Chancellors, to members of the Privy Council holding or having held certain high judicial offices specified in the Act, to two ex-colonial judges, and to two other persons, being privy councillors, appointed by sign manual and acting as assessors.

The experiment attracted little public attention at the time, and excited profound resentment in the mind of Charles Greville, the Clerk to the Council, who scented an increase in his duties unaccompanied by any addition of salary and complained that the Bill had been smuggled through the Lords without the slightest notice or remark.[3] To-day the Judicial Committee of the Privy Council exercises a wider jurisdiction than any court of justice in the world; its decrees penetrate into the remotest corners of the King's dominions. Prophetic eyes have seen in it the germ cell from which the Imperial Council of a federated Empire may some day be evolved, and in justice to the founder it should be added that Brougham's own judgments have played no small part in building up the law which is to-day administered throughout the length and breadth of British India.

Another act of the same session for which Brougham was responsible established uniformity of process in personal actions in his Majesty's three Courts of law at Westminster, doing away with some of the more bewildering technicalities which beset the suitor.[4] To so conservative a body as the Bar the innovations in pleading were not universally acceptable. The summary methods

[1] 2 & 3 Wm. IV. c. 92.

[2] 3 & 4 Wm. IV. c. 41. The composition of the Council has been slightly altered from time to time, and notably by the Appellate Jurisdiction Acts of 1876 and 1887.

[3] Greville, iii. 21.

[4] 3 & 4 Wm. IV. c. 39.

by which he temporarily deprived the Serjeants of their exclusive rights in the Common Pleas excited resentment even among those who profited by the change.[1] His abortive Local Courts Bill was equally distasteful to barristers and to the great London agency firms of solicitors. In his Act abolishing the superfluous Chancery offices he had fought, though without success, against the insertion of the compensation clauses, to the no small indignation of the legal profession. He had given great offence by some utterly uncalled for sneers anent barristers 'on the look-out' for work. The patronage thrown into his hands by the innumerable commissions had aroused inevitable resentment among the disappointed applicants, who vowed that he was regardless alike of professional opinion and professional qualifications.[2] He was accused of having cajoled and duped the Attorney-General, Sir William Horne, into resignation of his office;[3] and Sugden, with whom he had had a fresh conflict, spoke bitterly of 'his early haste and precipitation' in Chancery, 'his recent carelessness and delay; his ignorance, inattention and incompetence for the office he holds.'[4]

In March 1834 Greville, still incensed over the Judicial Committee, and smarting, as he admits, under a personal affront to his vanity, summed up Brougham's deficiencies in comprehensive style:

It is quite ludicrous to talk to any lawyer about the Chancellor; the ridicule and aversion he has excited are universal. They think he has degraded the profession, and the tricks are so palpable, numerous and mean that political partiality can neither screen nor defend them. As to the separation of the judicial from the ministerial duties

[1] *Vide infra*, 434.

[2] Among his favourites was the notorious Mr. Whittle Harvey, whom he strove, but in vain, to get appointed to the Secretaryship of the Charity Commissioners. I have often wondered how far Samuel Warren had Whittle Harvey in mind when he depicted Mr. Gammon, of the firm of Quirk, Gammon, and Snap, as enjoying the especial patronage of Lord Blossom and Box.

[3] *Vide infra*, 391.

[4] Greville, iii. 314.

of his office, it is in great measure accomplished without any legislative Act,[1] for nobody thinks of bringing an original *cause* into his Court. He has nothing to hear but appeals, which *must* come before him, and lunacy and other matters over which he has sole jurisdiction.

'Yet,' adds the Diarist with candour,

though the general opinion of the Bar seems to confirm him as a bad Chancellor, he is probably not nearly so bad as they endeavour to make him out.[2]

A verdict which, on the whole, has been endorsed by posterity. We have already had occasion to consider both his strength and his weakness as a judge. His extraordinary mental vigour, his courage in grappling with difficulties, and his power of coming to the point often carried him successfully into the heart of a case. It was in the every-day routine and practice that his failure was conspicuous; and the blame must be shared with the system which entrusted the vast interests and jurisdiction of the Court of Chancery to men who had never held a brief within its walls. A contemporary writer [3] has collected a number of Brougham's *gaucheries*, which might be paralleled from those 'sad mad days' when the Equity judges were sent on Circuit by a Chancellor whom few would have suspected of cynical humour. One or two will suffice.

In Chancery suits, as then conducted, all the evidence on which the various parties intended to rely was reduced to writing and embodied in the Bill and the subsequent formal documents. But it by no means followed that all the matter so collected was to be used at the hearing: much of it might be irrelevant, or inadmissible, or objected to on various grounds by the opponents. In consequence, only that portion which was actually read in Court and entered in the registrar's books was treated as evidence. Of nothing else was the judge supposed to be cognisant, and it was considered improper and inconvenient that he should run any risk of allowing his mind to be biassed

[1] *Vide infra* 395. [2] Greville, iii. 71. [3] *Law Magazine*, xiii. 280.

by the knowledge of facts which were not proved or admitted in Court. The consternation then of counsel may be imagined when Brougham began a case by observing jauntily that he had 'looked over the evidence,' just as if it were the pleadings at Nisi Prius.

His carelessness and habit of jumping to rapid conclusions exposed him to more serious censure. Once, at the close of the hearing of a heavy cause, he desired that the account books, on which everything hinged, might be handed to him to be consulted at leisure. When judgment had been given the solicitor applied to the registrar for the half-dozen bulky packets which had been entrusted to his Lordship, and it was found that not a single tape or string had been untied. Again, in *Townley* v. *Bedwell*, tried when he had occupied his high position for over three years, he was only saved by accident from perpetrating a gross injustice. Two cross petitions of considerable magnitude were in his list, and assuming that they were appeals and that the decision of the Vice-Chancellor was probably right, he did not even open the papers, but marked them 'Petitions dismissed; orders affirmed with costs.' The first glance showed the registrar that they were original petitions, that there were no orders to affirm or disaffirm, and that a hearing was absolutely necessary. Had Brougham's supposition been correct, the whole costs of the appeal would have been thrown away; and it was commonly believed in Lincoln's Inn that his much-vaunted despatch was only feasible by these methods.[1]

As the tide of popular favour set in against Brougham complaints of heavy and increasing arrears both in Chancery and the House of Lords began to be heard

[1] It was said bitterly that cases which came before the Chancellor might just as well be decided by tossing a halfpenny, or even better, for then the *heads* might have something to do with the result. I am not aware of any direct analogy being drawn between Brougham and Judge Bridlegoose. For *Townley* v. *Bedwell*, see 15 Beavan, 78, where the suit appears at a later stage. The story in the text is taken from the *Law Magazine*, xiii. loc. cit.

on all sides, and in the closing days of the session of 1834 Sir John Campbell, the Attorney-General, was instructed by him to move for certain returns from the Court of Chancery which would give the greatest satisfaction to the country. Armed with 'a long tabular statement professing to come from the files of the Court of Chancery,' Campbell assured his audience that there were no arrears subsisting—a state of things unprecedented since the time of Sir Thomas More—and that the House of Lords in its appellate capacity was in an equally happy condition. The order for the return was made amid prolonged applause ; but on the following day Mr. Lynch put a damper on the Attorney-General by declaring that there were upwards of 200 cases undisposed of in the Court of Chancery at that moment, and that in the House of Lords the arrears were still more considerable.[1] How far Brougham's pretensions would have been borne out by an official return it is impossible to say, for the prorogation of Parliament, followed at no distant date by its dissolution, put an end to the enquiry. Vice-Chancellor Shadwell, however, informed Greville[2] that an examination he had made himself into the number of hearings, decrees, and orders, showed that there was scarcely a shade of difference between what had been done severally by Brougham, Lyndhurst, and Eldon.[3]

Perhaps the most formidable charge against Brougham in his judicial capacity is his conduct in the case of Brookman *v.* Rothschild, as related by Mr. Pemberton Leigh, whose veracity and great professional ability are equally beyond suspicion. It was an appeal to the

[1] Hansard, xxv. 1260, 1269 ; see Campbell's *Life of Brougham*, 445.

[2] iii. 76.

[3] On the other hand, in the House of Lords, Brougham decided 219 out of 225 appeals that came before him in four Sessions ; whereas Lyndhurst, during his first Chancellorship of four Sessions, decided 144 appeals out of 184, and 171 appeals in his last Chancellorship of five Sessions. Brougham's early acquaintance with Scotch law placed him in the hearing of Scotch Appeals at considerable advantage over some of his predecessors and over his colleagues in the Upper House.

House of Lords against a judgment by Vice-Chancellor Shadwell in which some intricate and hitherto unsolved points in the law of principal and agent had been decided adversely to Baron Rothschild, for whom Pemberton Leigh and Knight Bruce (afterwards Lord Justice) were retained.[1]

Brougham was engaged in preparing his speech for the Reform Bill. After evincing the most scandalous partiality in extending to Sugden, of whom he was in great terror, an indulgence which he refused to us, he sat for some time on the case without even the semblance of attention. In the course of the argument, which lasted for two or three days, he sent for Lord Wynford to assist him, who knew no more of Equity than he did himself. At the close of the argument Lord Wynford got up, and holding the papers, which were very voluminous, in his hand, said that of course it could not be supposed that he had read through such a mass, and that he had heard quite enough to convince him that the appeal ought to be dismissed with costs; and dismissed it was, neither of the judges who sat having the least knowledge of a case admitted to be of the first impression.

Lord Kingsdown brands it as the most shameless proceeding of which he was ever a witness, and one which would well have justified the impeachment of both the learned Lords. Yet such was the excitement at the time about the Reform Bill, and such the unbounded popularity of the Chancellor, that any jobs, however outrageous, might be perpetrated by a Minister.

It was behaviour such as this which lent a sting to the popular charge against him of 'counterfeiting the Great Seal' by his demeanour in Court.

Even in his own pet creation, the Judicial Committee of the Privy Council, Brougham could not be induced to conform to the ordinary standard of judicial duty and dignity. 'Here am I,' writes Campbell,[2] 'sitting idle while Brougham examines the witnesses. He is like

[1] *Recollections of Lord Kingsdown*, 63.
[2] *Life of Lord Campbell*, ii. 35 (October 21, 1834).

Bottom in the play, and likes to act all the parts himself.' Another time he would sit working out sums in algebra or extracting cube root to prove the structure of a honeycomb for his new edition of Paley. Writing letters, reading newspapers, cutting jokes, his attention was of the most spasmodic order; but 'when something smites his ear, out he breaks, and with a mixture of sarcasm, ribaldry and insolence he battles the point.' [1]

On one of these occasions, however, he more than met his match. In April 1834 the petition of the University of London for a charter was being argued, and Bickersteth, as counsel for the University of Cambridge, was endeavouring to show that degrees were titles of distinction derived from the Crown which could not lawfully be conferred without the authority of the Crown.

Will you bear with me for a moment, interposed Brougham, scenting battle, while I administer to you the same interrogatory which I administered to Sir Charles Wetherell? What is to prevent this joint-stock company, or call it what you will, from not merely giving certificates of proficiency, but assuming to confer degrees, except an Act of Parliament, which there might be some little difficulty in passing at present? In the first place, replied Mr. Bickersteth, the utter scorn and contempt of the world. They would be just as contemptible as any private individuals who should, without warrant, take upon themselves to confer titles of honour. In the next place, if they should not be prevented from the derision to which they would expose themselves, they might, I presume, be called upon to show in the Court of King's Bench by what warrant they took on themselves to confer such distinctions.[2]

For once the Chancellor was silenced, and the rebuke is said to have given especial pleasure to the King: the incident was destined to have an important effect on Bickersteth's career.[3]

[1] Greville, iii. 119, 267.

[2] *Life of Lord Langdale*, i. 395.

[3] Bickersteth declared that Brougham never manifested any trace of unfriendliness or want of cordiality towards him in consequence;

Another cause of Brougham's unpopularity is to be found in the lavish profusion of his promises and their very inadequate performance. According to Hayward,[1] he dealt them out so freely at the Beefsteak—in which sublime society he had more than one tussle with Alderman Wood—that he found the club too hot to hold him. And Miss Martineau[2] has described how he guaranteed her out of his own pocket 100*l.* due on work done for the Society for Diffusion of Useful Knowledge, and straightway forgot all about it.

It was in an evil hour for his posthumous renown that Brougham incurred the dislike of the 'deaf girl from Norwich.' Starting life with an intense admiration 'for the good words he spoke and the good things he planned in evil days,'[3] she had received encouragement from him in her early literary struggles, as well as much valuable information for her 'Illustrations of Political Economy.' Personal acquaintance, deferred until he had reached the zenith of his power, destroyed every illusion and inspired her with strong feelings of aversion. His treatment of Lord Durham, who, in Miss Martineau's eyes, was *chevalier sans peur et sans reproche*, made her hot with indignation; and the cup was filled by the publication in his Memoirs of a letter which he had written on her behalf, but without her knowledge, or consent, to Lord Grey in August 1833.[4] Her sketches of him, both in the obituary notice she contributed to the 'Daily News,' and in the pages of her own Autobiography, form perhaps the most biting summary of his career that has ever been penned.

To the somewhat prim and shy, but observant and intensely self-conscious, spinster, the Lord Chancellor seemed vain and selfish, low in morals, and unrestrained

but Brougham felt the retort deeply, and speaks of his conduct (*Life of Brougham*, iii. 425) as 'extremely offensive to me personally.'

[1] *Quarterly Review*, cxxvi. 56.

[2] *Autobiography of Harriet Martineau*, i. 120.

[3] Miss Martineau, *Biographical Sketches*, 154.

[4] *Life of Brougham*, iii. 302.

in temper.[1] 'If not able to assume with ladies his ordinary manner towards silly women, he was awkward and at a loss.' He was made nervous and irritated by her lap-dog, which sprang upon his knee, and he was ill at ease when confronted with the caoutchouc tube that served Egeria as a speaking-trumpet. He talked excessively fast, and ate fast and voraciously; and his personal appearance prepossessed her as little as his behaviour, 'not a morsel of his dress being anything but black from the ridge of his stock to the toes of his polished shoes. Not an inch of white was there to relieve the combined gloom of his dress and complexion.'[2]

Miss Martineau's estimate is endorsed in some striking particulars by one so little liable to Puritan prejudices as Charles Greville:

> To flourish away, and become Cock-of-the-Walk among silly and dissolute people of fashion, to talk incessantly in a strain of boisterous levity, and make free and frivolous men and women roar with laughter at his coarse but not witty pleasantries, seems now the height of his ambition. . . . He has frittered down his really great powers to the level of his new friends and companions, but he has no notion how to converse or 'live with ease,' and nothing can be more awkward and ungraceful than the exhibition he makes of himself as a man of fashion.[3]

But there are pleasanter pictures of Brougham scattered over the pages of Greville's diaries. We meet

[1] *Autobiography of Harriet Martineau*, i. 309.

[2] This peculiarity of Brougham is partially borne out in a letter to Creevey from one of his lady correspondents (ii. 137): 'We have seen a good deal of Mr. B. lately; he went to the play with us three or four times, and you never saw such a figure as he was. He wears a black stock or collar, and it is so wide that you see a dirty coloured handkerchief under, tied tight round his neck.' In H. B.'s caricature he is sometimes represented as black as a crow or as Othello. The famous plaid trousers were an adoption of later years.

[3] 2nd ser. ii. 235. These lines, it should be remembered, were written in 1844, when Greville was in a state of acute irritation with Brougham (*vide infra*, 361). He admits in the same breath that he was *once* 'more brilliant and amusing than anybody.'

him with a party at Hanbury's Brewery, taking the explanation of everything into his own hands, and, as became the editor of the Library of Universal Knowledge, expatiating on the modes of brewing, the machinery, the feeding of the cart-horses. 'After dinner the account books were brought in, and the Chancellor made various pertinent remarks on the manner of book-keeping,'[1] which it is to be hoped were received in a better spirit than his purely technical lecture.

Gude faith, sirs, the Scotch foreman is reported to have said,[2] but it made ma hair staun on en' to hear the Lord High Chancellor o' Great Britain tellin' the Lord High Treasurer a lang tail about maut and a' the brewin' o't, and nae word o' truth fra beginning to en'. It made a thinkin' mon reflec' what a terrible pass things must ha' come till when ae Minister could just tell, and anither Minister just believe, sic awfu' cantrips. Eh, Sirs, nae barrel can be gude that that blatherin' chiel has got the brewin' o'.

Again at the British Museum, though all the officials are in attendance, he will not allow anybody to say a word, but insists on doing the honours himself down to the collection of minerals. 'A grand mixture of moral, political, and intellectual incongruities' is the comment.[3] But there is abundant proof that when his evil genius was dormant Brougham could be the most versatile and delightful of companions.

The clouds were not long in gathering round the Chancellor's head. Twelve months of a Reformed Parliament had materially weakened the position of the Whigs in the country. The hungry millions found little sign of the new heaven and the new earth which they had been promised. Lassitude was turning into reaction; Lord Althorp's finance had been a failure, and his leadership of the House of Commons, now that the

[1] Greville, 1st ser. ii. 149.
[2] Review of Lord Brougham's translation of the *De Coronâ*, 165.
[3] Greville, ii. 150.

great Reform battle was over, had become nerveless and ineffective. And then, as to-day, Ireland proved the eternal stone of offence. The Coercion Act of 1833 aroused O'Connell and his following to fury, while it excited sore misgivings among many of the Ministerialists. On the other hand, the Irish Church Temporalities Act had sounded the alarm, not only among the militant Orangemen, but in the ears of a large number of sober-minded Churchmen.

Brougham saw with mortification the disrepute into which the Government was drifting. There were ill-concealed differences in the Cabinet both on foreign and domestic affairs. Before Parliament met in January 1834 Lord Grey was threatening to resign, and, but for a remonstrance drawn up by Brougham and signed by the rest of the Cabinet, would have carried out his intention. During the early days of the Session the situation of the Ministry became more and more shaky, and on April 30 the Chancellor felt it his bounden duty to lay before the Cabinet a memorandum from which a characteristic passage may be extracted:[1]

No one of its members has, perhaps, more reason personally to desire the ease which the resignation of the Ministry would bestow on him than the writer of these pages. When he says that, besides sitting daily in Court seven hours, he is never in bed before two, and that he has since November written with his own hand above seventy long judgments, some of which took an hour, and some two to read, and all of which would fill two very large printed volumes—he is far from desiring to boast of hard work; but he makes the statement as an irrefragable proof that he must have a singular taste to love such an existence. And to what does he prefer it? To a state which he has all his life deemed the perfection of happiness and never enjoyed for a week, namely, being free from all care and all occupation, and at liberty to devote himself to his public and Parliamentary duty as an independent member of Parliament, upon the side of the question most congenial to his habits.

[1] *Life of Brougham*, iii. 359.

Brougham did not limit himself to a single memorandum; his Memoirs abound with them, with letters addressed to Earl Grey, and accounts of private interviews with the King, in which his Majesty is made to express the highest confidence in the Premier and the Chancellor. The correspondence shows with what difficulty the former was induced to remain at his post, but they are naturally silent as to the fact that the principal thorn in Earl Grey's cushion was Brougham himself. When the die was finally cast in November 1830, and the Whig triumvirate at Lansdowne House resolved to appease the member for Yorkshire with the Seals, Lord Holland exclaimed, 'I suppose it must be so, but this is the last time we shall meet in peace within these walls.' It was no idle foreboding; Lord Holland knew his man. Brougham's loquacity, his want of reticence, his perpetual combativeness, his incurable meddling in departments not his own—added to grave suspicions of his loyalty, and a settled conviction of his utter want of discretion—made him an almost impossible colleague. During the storm and stress of the Reform Bill his fighting value more than balanced his faults of conduct and temper, but, when the victory was won, his misdirected activities became unbearable. And the irritability and nervous excitement which were responsible for so many of his eccentricities were now accentuated by a furious campaign which was opened against him in the Press.

Hitherto Brougham had been a prime favourite with the newspapers, a position to which his powers of 'managing' the Fourth Estate, and his widespread connection among the Radicals, the philanthropists, and the 'march of mind men' had largely contributed. The 'Times' in particular had been, metaphorically, in his pocket, and had dosed him with flattery which it required a strong appetite to swallow. But the Poor Law Bill, in which Brougham was especially interested, did not meet with the approval of Mr. Walter, who regarded it as chimerical and unpractical; and a root and branch condemnation of

it appeared in the issue of April 18, 1834. A day or two later, as Brougham was sitting in the Court of Chancery, he received a laconic note from Lord Althorp: 'Are we to make war on the "Times" or come to terms?' The Chancellor despatched a reply and tore up the letter, the fragments of which were picked up by an observant reporter, pieced together, and taken to the office of the paper. That very day, whether by coincidence or design, some information which Barnes had solicited from the Government was refused him. It was concluded that Brougham had given his counsel for open war, and he was selected for immediate reprisals. 'We have stood by him for fifteen years, but we are compelled to throw him over,' was the opening sentence.

Such is the traditional story, but the alleged provocation fails to account for the bitterness and ferocity of the attacks; it looks as if some deadlier offence must have been given, and there is a version which traces the provocation to a reckless saying of Brougham's, overheard by Mr. Barnes at Brooks's! It should be remembered, however, that the worst of the attacks took place after Brougham had incurred much odium by his share in the transactions immediately to be narrated.

A peculiarly cruel cut was the insinuation that the very man to whom was given the custody of those who were no longer masters of their own actions was himself the victim of a morbid excitement scarcely distinguishable from insanity. Nor was the insinuation without foundation. Those who knew Brougham best were of opinion that he was undoubtedly subject to delusions; 'incredible labour and constitutional restlessness had done their work on that powerful but abnormal brain.'

In spite of the great journal the Poor Law Bill passed. The Chancellor took charge of it in the Upper House with all his wonted energy and knowledge of detail. The revolution which it effected in English life is an enduring monument to his work as a legislator, though for years to come the 'new Poor Law' was a most

effective stick with which to belabour the Whig dog. And in the same Session he carried a Bill for the establishment on its present footing of the Central Criminal Court.

Parliament was prorogued on August 15, but before that day the Government had been shattered almost out of recognition. A motion for the reduction of the temporal possessions of the Church of Ireland revived the dissensions in the Cabinet. The Chancellor, so at least he told Sir Denis Le Marchant,[1] suggested a *via media* in the shape of a commission to enquire into the revenues of the Church. How 'Johnny Russell upset the coach' is matter of history, and on May 28 Mr. Stanley, Sir James Graham, the Duke of Richmond, and Lord Ripon seceded from the Government. Again Lord Grey threatened resignation, again he was dissuaded, again Brougham claims the credit; but the Premier's decision was mainly influenced by an address of confidence presented to him by his followers in the Commons at the instigation of Lord Ebrington. The vacancies were filled up, and thick-and-thin supporters of the Government professed to believe that the purging had strengthened their constitution.[2]

That much-buffeted vessel, however, was no sooner off the rocks than on to the shoal. The operation of the Coercion Act of the previous Session had been limited to a year, and the question of renewal had now to be faced. By common consent it was agreed that the court-martial clauses should be dispensed with. But the Marquess of Wellesley, in a letter to Lord Grey, written in April, declined to be responsible for the government of Ireland unless the rest of the Act was renewed in its

[1] *Life of Lord Spencer*, 487.

[2] Campbell, who was then contesting Edinburgh, was knocked up at four in the morning by a messenger from Brougham. 'Dear Jack, Ned Stanley, Graham, Richmond, and Rippy have left us, but be not alarmed, we shall go on better.' In his *Life of Brougham* (429) he quotes from memory. The letter as printed in the *Life of Lord Campbell*, (ii. 47 *n.*) is by no means so colloquial and familiar.

entirety. Things looked black in the House of Commons, and O'Connell was using all his armament, legal and illegal. At the beginning of June there occurred a vacancy for Wexford County, and the Whig candidate was threatened with a formidable opposition, while the Tithe Bill, which had been introduced in the previous February, was still in the trough of the waves. Mr. Littleton,[1] the Secretary to the Lord-Lieutenant, was in charge of both the Government measures, and it occurred to him that, if the clauses prohibiting public meetings in Ireland were dropped, O'Connell might withdraw the Repeal candidate from Wexford and allow the Tithe Bill to pass.

Littleton was son-in-law to the Marquess, and the latter had enjoined him, when in difficulties, to consult Brougham, with whom he himself was on terms of special intimacy. The Chancellor was flattered at being taken into counsel; it was agreed that they should both write to the Viceroy, urging him to consent to the abandonment of the public-meeting clauses, and the letters were despatched on June 19.[2] On the following day a Cabinet meeting was held at which it was finally decided to *retain* the clauses. Littleton was not a member of that body, but Brougham, though it is most unlikely that he can have sat silent, gave no clue to his correspondence with Dublin.

On June 23 Wellesley, thus tutored, wrote to Lord Grey and pledged himself to govern Ireland without the public-meeting clauses, which he had hitherto declared indispensable. On the same day Littleton communicated the Viceroy's change of front to Lord Althorp, and obtained his sanction to open up negotiations with O'Connell, unknown to the Prime Minister. Althorp, it is true, begged him to be extremely cautious, and to confine himself to an intimation that in all probability

[1] Afterwards Lord Hatherton.

[2] Lord Hatherton, *Memoir and Correspondence relating to Political Affairs, June and July* 1831, 10.

the Cabinet would not renew the Coercion Act in its full rigour. But Littleton was like wax in the hands of the Liberator, who elicited, in the course of an interview at the Irish Office, that Wellesley was prepared to abandon the public-meeting clauses, and that neither Littleton nor Lord Althorp would be party to a Bill in which they were retained. O'Connell pledged himself to secrecy, and ordered his friends to support the Government candidate for Wexford.

Meanwhile Lord Grey was in sore perplexity at Wellesley's attitude, and, after a further exchange of despatches, called another Cabinet for the 29th. The Viceroy's letter of the 23rd was read, and Lord John Russell remarked that the undertaking contained in it looked more like an answer to a question than a spontaneous offer. Thereupon Althorp revealed the whole story. The discovery of what he regarded as an utterly unjustifiable piece of meddling was a mortal wound to Lord Grey. He said afterwards that, had he been a younger man, he would have made the Chancellor resign, and faced the consequences, but at seventy years he lacked the nerve.[1]

The worst was yet to come. The Cabinet, by a majority of which Brougham formed one, resolved to go on with the Bill in its integrity, a decision which was communicated to O'Connell by Littleton on July 1. O'Connell was furious, vowed he had been tricked, and told the Irish Secretary he had no course but to resign. Littleton, still relying on O'Connell's pledge to secrecy and afraid of breaking up the Ministry, resolved to remain. That evening the Bill was read for the first time in the House of Lords, and on the 2nd O'Connell gave the House of Commons his version of the 'secret' negotiations. 'The pig's killed' was Lord Althorp's agricultural comment. On the 4th Littleton resigned, on the 7th Lord Althorp took the same course, and on the 9th Earl Grey informed the Peers that, having

[1] Torrens's *Life of Melbourne*, ii. 3.

received his noble friends' resignation, there was no alternative left him but to tender his own.

By July 14 Lord Melbourne, whom the departing Premier recommended to the King, had reconstituted the Administration. Lord Althorp was induced to withdraw his resignation, and Littleton resumed his post as Irish Secretary, the net result being the retention of Lord Grey's Government minus Lord Grey himself, the only one of the chief actors in the drama against whom no charge of indiscretion or insincerity could be brought. Littleton had been unpardonably rash, Lord Althorp had failed to display his usual judgment, but it was the unjustifiable and disingenuous conduct of Brougham which produced the catastrophe.[1]

I wish you would look a little at the share you have taken in the business, wrote Lord Althorp to him on July 10. Without communication with one of your colleagues, with the view I know of facilitating business in Parliament, you desired Littleton to write to Lord Wellesley, and you wrote to him yourself, to press him to express an opinion that the first three clauses of the Bill might be omitted. . . . Having originally produced the difficulty by writing to Lord Wellesley, you gave your decision directly against what you had advised Lord Wellesley to do.[2]

With these words of Lord Althorp before us, confirmed as they are by Littleton and by every independent authority, it is amazing to read Brougham's own version of the incident.[3]

The mischief-makers attempted to get up a case against me founded upon a letter I had written to Lord Wellesley. A letter was in fact written about that period, but it was of a purely private nature, and could not at any time have exercised the smallest influence on his mind. How should it ? It was a letter about some verses of Lord Wellesley's

[1] Le Marchant, *Life of Lord Spencer*, 511.
[2] *Melbourne Papers*, edited by L. C. Sanders, 257.
[3] *Life of Brougham*, iii. 398 and 416-7.

and about other gossip too private to be quoted. But the sentence I have referred to was as follows: 'You have done yourself much credit, in my opinion, in recommending the giving up of the court-martial clauses in the Bill. If things were in such a state as to justify you in recommending the omission of the unconstitutional clauses about meetings also, you would be on a pinnacle.' That was the exact sentence and contained every word I wrote to Lord Wellesley on the subject.

To a large section of the public, and to the family and friends of the fallen Premier, Brougham stood convicted as the villain of the piece. They were persuaded that the driving of Lord Grey from office had long been the object nearest his heart, and the 'Times' predicted that Lord Melbourne 'would soon find him out, as the honest men of the community were an overmatch for the knaves.' That he cherished any such design I have never seen any reason for believing; and Lord Grey himself absolutely disclaimed any such suspicion.[1] A letter of Brougham's, dated —— 22 (*sic*), 1834,[2] puts the case not unfairly:

My whole object for the past four years was to keep Lord Grey in, knowing he was anxious every six weeks to retire; and also knowing that his going would break up the Government. . . . Any dream so wild as my turning out Lord Grey never was invented. The fancy that I wished to succeed him is as absurd to the full; for every one of my colleagues always knew that nothing would induce me so to act. I always refused this when Lord Grey was anxious to go out, and my reason is plain. I could not afford it without getting into debt (the end of a public man's independence). . . . As for honour, what greater could I have than the Chancellor enjoys?

[1] See his letter to Brougham of September 15, 1835 (*Life of Brougham*, iii. 434, and *cf. ibid.* 415).

[2] *Ibid.* iii. 432. The letter is merely addressed 'My dear P.', and I cannot help a suspicion as to whether it ever passed through the post.

The idea that Brougham ever refused the Premiership is pure hallucination, but he certainly spread the report,[1] and gave as a reason for his refusal that he thought it better that 'Lamb should be at the Treasury.' His whole conduct during the interregnum and after Melbourne's appointment gave rise to unlimited gossip and imputation. He informed the laughing Peers that at such a juncture he felt bound, at all sacrifice of his comfort, at the destruction of his own peace of mind, to stand by his gracious monarch and his country. And he simply deluged his Royal master with letters,[2] still nursing the delusion that he stood high in his favour. In after years he brought himself to believe that his energy in forcing a reconstruction of the Whig Ministry and giving William no opportunity for turning to the Tories was the source of the King's enmity towards him.

And, indeed, it is the verdict of Campbell, who, as Attorney-General, had access to the best information, that the Melbourne Ministry would never have been formed 'but for the extraordinary promptitude, vigour, and daring exhibited by Brougham.'

He continued to see all the other members of the Cabinet privately and separately, and he persuaded them that there was no occasion for them to retire; that if Lord Althorp would come back they could get on without Grey; that Althorp would come back for the public good if his original wish for the mitigation of the Coercion Bill were now complied with.[3]

This zealous lobbying not unnaturally added fuel to the indignation of the Grey party; and, however innocent he may have been of any desire for his former chief's retirement, the Chancellor obviously revelled in the additional importance which it conferred upon him. He

[1] Campbell, *Life of Brougham*, 433.

[2] Three in one day on July 12 (*Memoirs*, iii. 408).

[3] Campbell, *loc. cit.* The original Bill was dropped and a mitigated one introduced.

regarded himself as practically the head of the Administration. He patronised Melbourne, and though he fought the Government Bills in the House of Lords with all his energy and pertinacity, and was ready as ever to meet all comers in debate, he took delight in trampling upon the susceptibilities of his colleagues. He thought nothing of volunteering to give evidence before a committee of the Commons in direct contradiction to the views of the Government,[1] and appeared before them in all the majesty of cocked hat and gold robes, with train-bearer and mace-bearer in attendance. Finally, he expounded in the House of Lords, as a Government measure, a Bill to amend the appellate jurisdiction of their Lordships without having submitted a single line of it to the Cabinet.

As soon as the Court of Chancery had risen for the Long Vacation Brougham started on what has been called his John Gilpin ride to the North, where Scotland was desirous of doing honour to her illustrious foster-son. On the road from London he changed horses at Lancaster, and, learning that the Grand Court of the Northern Bar Mess was to sit that evening, he craved leave to rejoin the revels. Here he displayed all that 'abandon' in which Master Chawner was found wanting. He jested, drank, and sang, according to Campbell, two French *chansons à boire*,[2] till at last a suggestion that he should resume his old Circuit style and dignity of Henry IX., and go through the coronation ceremony, reminded him of William IV.'s imperfect sense of humour and drove him back to his hotel. The Scotch were sincerely anxious to welcome the lawyer, orator, and statesman who had rescued the kingdom from the fetters

[1] E.g. on the proposed abolition of the duties on newspaper stamps and advertisements.

[2] 'No laureate need we at our board,' then spoke the Lord of Vaux,
'Here's many a voice to charm the ear with minstrel song, I know,
'Even I myself.' Then rose the cry, 'A song, a song, from Brougham.'
He sang, and straightway found himself alone within the room.
Bon Gaultier Ballads.

of the Lord Advocate and given Scotland, for the first time since the Union, a parliamentary representation. He was greeted with salvoes of artillery and torchlight processions, with addresses, and banquets, and the freedom of ancient burghs, but by the time the progress was over, his hosts were sated with oratorical indiscretions and with escapades worthy the log of the 'Mad Brig.'

At Rothiemurchus, where a large party of Southrons were the guests of the Dowager Duchess of Bedford, he 'romped so familiarly with the ladies that, to be revenged on him, they stole the Great Seal,' and hid it in a tea-chest in the drawing-room, where he was compelled to discover it blindfolded and guided by the music of the piano, which rose loud or sank according as he was 'hot' or 'cold.' The King had been furious with the Chancellor for conveying the Great Seal across the Border, an act which he genuinely believed to partake of the nature of high treason ; and an exaggerated account of the romp at Rothiemurchus did not tend to calm him. Nor was he in any way soothed by the bulletins in which Brougham assured him of their joint popularity in the North.[1]

September 15 had been chosen for a great banquet given to Lord Grey by the Liberals of Scotland, a compliment which he had only been induced with great difficulty to accept. Brougham's letters show that from the first inception of the idea in August he had been in communication with the managers of the feast, and had arranged his journey to the North accordingly. Moreover, he was due in Edinburgh for the meeting of the British Association in the following week ; but considerable embarrassment was caused when he invited himself to Oxenford Castle, where Sir John Dalrymple was entertaining Lord and Lady Grey and a party of the principal guests. Amongst them was Sir John Campbell.

[1] Campbell, *Life of Brougham*, 450–1.

Never, writes the latter, did I so much admire Brougham's boldness of heart and loftiness of manner. He was fully aware of the feelings of all the Greys towards him, and if he had been before ignorant, he must now have been informed by their averted eyes, cold looks and shunning demeanour. But he accosted them, and continued to behave towards them as if he had believed that they regarded him with unmixed benevolence, only that his approaches were more than usually respectful and his caresses more than usually tender. He conquered.[1]

The festival dinner was a notable occasion, and Lord Grey's speech was worthy of it; but Brougham was not accustomed to playing second fiddle, and his reply to the toast of his Majesty's Ministers was in his most characteristic vein. He patronised the King, condoled with the ex-Premier, indicated the quarter to which credit for the achievements of the first Reformed Parliament was mainly due, and indulged in a glowing panegyric on the virtues of the Chancellor. 'My fellow-citizens of Edinburgh,' he began, 'after having been four years a Minister these hands are clean.' To those near enough to observe it was apparent that, as a matter of fact, the ministerial hands were exceedingly dirty;[2] but the trope was allowed to pass.

By October he was back in London hearing appeals in the Privy Council. He could not have been unconscious of the ferment which his progress had occasioned, and he now declared that he had only intended a quiet tour to Dunrobin, and never expected meetings or addresses. The newspapers, however, gave him no peace. He was compared to 'a quack doctor travelling through the provinces, puffing himself and his little nostrums.' Another writer styled him an itinerant mountebank; and the young Disraeli, no novice in the art of vituperation, dubbed him a vagabond and overrated rebel. There is good reason for believing that these newspaper attacks

[1] *Life of Lord Campbell*, ii. 51.
[2] *Quarterly Review*, cxxvi. 52.

served to strengthen the King in his determination to rid himself of his present advisers at the earliest opportunity. They certainly brought to a white heat his passion against Brougham, who was still enveloped in the delusion as to the special share of Royal favour which he enjoyed, and seemed to suffer from William IV. on the brain.

We have seen how the vacancy in the Leadership of the House of Commons, caused by the elevation of Lord Althorp to the peerage, was utilised by the King.[1] As Campbell was walking down to Westminster on the morning of November 14 the Lord Chancellor's coach passed him, pulled up abruptly, and Brougham's head was poked out.[2]

> How do you do, Sir John Campbell, Mr. Attorney no longer ? We are all out ! It was done yesterday at Brighton, Melbourne went down Prime Minister and returned a simple individual. I am going to give a few judgments before delivering up the Great Seal.

Brougham did not relate, perhaps he did not realise, how largely he himself had contributed towards making the dismissal irreparable. The night before, on his way home from Holland House, he had dropped into Downing Street, expecting to hear that the arrangement by which Lord John Russell was to succeed Lord Althorp had been duly approved by the King. He learnt the details of the catastrophe, and that the Duke had been commanded to Brighton. Palmerston was the only other Minister present, and both he and Brougham were bound over to secrecy until the Cabinet, which was summoned for noon the next day. At midnight a tall stranger muffled in a cloak presented himself in Printing House Square, and in the morning the 'Times' contained the following paragraph :

> We have no authority for the important statement which follows, but we have every reason to believe that it is perfectly

[1] *Supra*, 108. [2] *Life of Lord Campbell*, ii. 57.

true. The King has taken the opportunity of Lord Spencer's death to turn out the Ministry. There is every reason to believe that the Duke of Wellington has been sent for. The Queen has done it all.

That Brougham was the person guilty of this breach of confidence has never been doubted. The 'Times' was brought in to the King by Sir Herbert Taylor while he was trying to overcome the reluctance of the Duke to act in the absence of Peel. Supposing the paragraph to be the work of Melbourne, the Sovereign called upon Wellington to save him from his unfaithful servants. The loyalty of the Duke was not proof against such an appeal, and he consented to carry on the Government, while Hudson was sent post-haste to Rome in search of Sir Robert. Hot with anger at the attack upon his consort, William showed little consideration to his late Ministers; they were hounded out of office, and the *insignia* were demanded back with no pretence of courtesy or ceremony. Brougham, however, managed to retain the Great Seal for two or three days in order to deliver some judgments; and then, learning that the King was expressing sentiments about him very different from those which he fondly imagined to have animated the Royal breast, 'he sent back the *clavis regni* to the King in a bag, as a fishmonger might have sent a salmon for the King's dinner.'[1]

His final address to the Bar was marked by dignity and propriety. He claimed to have disposed of all the cases that had been heard before him down to the last, and he had

> the great satisfaction of reflecting that this Court, represented by its enemies as the temple of discord, delay and expense, has been twice closed within the space of six months.[2]

But his next step 'proved,' in the eyes of Lord Melbourne, 'a greater want of judgment, a grosser ignor-

[1] Campbell, *Life of Brougham*, 460.
[2] iii. Mylne and Keen, 723; and *vide infra*, 393.

ance of his own situation, than any which he has yet taken.'[1] Lyndhurst's return to the Woolsack left vacant the post of Chief Baron of the Exchequer, an office to which Scarlett was clearly entitled. Brougham, however, wrote to the Chancellor offering to do the work for no extra pay beyond his own retiring pension, and to undertake the whole of the Equity business which was still attached to the Court, thus rendering it possible to abolish the office of Vice-Chancellor. Lyndhurst returned a polite refusal, and Brougham, who was by this time on his way to the south of Europe, then declared that he found himself 'under the necessity of desiring that the tender of gratuitous service formerly made should be considered as withdrawn.' By this time, however, his magnanimous proposal had become common knowledge. It was regarded as a violation of the rules of the profession, as a shabby attempt to deprive Scarlett of his due, and as an act of political desertion. In public and private it was equally reprobated. H. B. drew a cartoon of 'the Vaux and the grapes,' and the incident extinguished finally and for ever Brougham's popularity with the masses of his countrymen. In Gladstone's judgment 'no man had ever fallen so fast and so far.'

[1] Torrens, *Life of Melbourne*, ii. 54.

CHAPTER XV

BROUGHAM'S EXCLUSION FROM OFFICE— HIS FEUD WITH THE WHIGS

1835–1846

BROUGHAM spent the Christmas of 1834 in the south of France.[1] He seems to have been astounded and overwhelmed by the torrent of abuse directed against him. It was not only the 'Times' which declared that the downfall of the Government was 'referable in a great measure to the unbecoming conduct of Lord Brougham as Chancellor;' the same accusation, in fiercer language, pervaded Brooks's, and wherever else the Whigs were wont to foregather. Melbourne himself seems to have spoken in no measured terms of his former colleague; for, shortly before the assembly of the new Parliament, Brougham wrote to him, threatening public vengeance and demanding an explanation.[2]

Melbourne was in no mood for mincing matters. He was suffering under a double grievance. The famous paragraph in the 'Times' had exposed him to an odious suspicion at the hands of the King, and he considered that the illicit correspondence with Lord Anglesey had been a special affront to himself, in whose department as Home Secretary Ireland was included.[3] In spite of a sweet temper, Melbourne was not of a forgiving disposi-

[1] He had intended to cross into Savoy, but was unable to do so on account of the cholera, and in this way made the discovery of Cannes, the fishing village where Napoleon had landed on his return from Elba.

[2] The letters, if preserved, have not been published; see *Melbourne Papers*, 258.

[3] *Ibid.* 262.

tion. He had resented the patronising airs and general braggadocio of his Chancellor,[1] and, moreover, he was convinced that Brougham was not always accountable for his words and actions. He unburdened himself accordingly in language which, for plain speaking, has seldom been equalled :

> . . . I must plainly state that your conduct was one of the principal causes of the dismissal of the late Ministry, and that it forms the most popular justification of that step. . . . You domineered too much, you interfered with other departments, you encroached upon the province of the Prime Minister, you worked, as I believe, with the Press in a manner unbecoming the dignity of your station, and you formed political views of your own and pursued them by means which were unfair towards your colleagues.[2]

And the indictment closed with a significant passage which ought to have prepared the recipient for the events of the immediate future :

> We stand at a new point of departure, and it is now right and expedient that I should determine for myself upon what principles and with whom I will again engage in public affairs.

Parliament met on February 19, 1835, and the ex-Lord Chancellor led the assault upon Ministers in the Upper House in a speech which by its vehemence recalled memories of his old Opposition harangues in the Commons. On April 9 Peel resigned, and Melbourne was recalled to the Royal counsels. The crisis of Brougham's fate had come. With his extraordinary power of mentally effacing the past, and relying on the belief that his presence on the Woolsack was indispensable, he seems to have been haunted by no doubts or misgivings. But Melbourne had made up his mind never to sit again in

[1] Torrens, *Life of Melbourne*, ii. 110.

[2] *Melbourne Papers*, 257 *et seq.* February 14, 17, 1835

a Cabinet with Brougham, and he worked round the leading members of the new Government to his opinion. Grave fears were entertained of the vengeance which it would be in Brougham's power to wreak, but the Premier clinched the matter by saying that 'if left out he would be dangerous, if taken in simply destructive.' It was agreed that the fall should be broken by making no appointment as Chancellor, and by placing the Seals in commission. And Melbourne undertook the unpleasant duty of announcing to 'the startled vision and incredulous ear of Brougham that his Lordship was destined to be the scapegoat of Whiggism and to be hurried into the wilderness with all the curses of the nation and all the sins of his companions.'[1]

Why don't you say, Brougham wrote to Melbourne some time afterwards, as you did when you took the Great Seal from me, 'God damn you, I tell you I can't give you the Great Seal, and there's an end of it'?

But, according to the generally received account, he was made to believe that the King's personal dislike was, for the present, an insuperable bar to his inclusion in the Ministry, and was even flattered at being a martyr to Royal prejudice.[2] He was further mollified on learning that the Seal was to be in commission, and pleased with the names of the commissioners—Pepys, the Master of the Rolls, Vice-Chancellor Shadwell, and Mr. Justice Bosanquet. He foresaw that such a makeshift could only be for a little while, and he deemed that it must lead to his recall. He nursed the pleasing fancy that, standing outside the Government, he would hold its destinies in the hollow of his hand, and he even told his friends that when Melbourne came to call on him he had ready in his possession a written refusal of the Seals if they were offered to him.

The difficulty was thus tided over, but in a manner

[1] *Letters of Runnymede*, 31.
[2] Campbell, *Life of Brougham*, 467.

which left many misgivings. Lord Spencer, who had refused the most urgent solicitations to rejoin his old chief, gave expression to sentiments which must have been shared by many of those who had stood shoulder to shoulder with Brougham in the dark days of Opposition.

I suppose, he wrote to Mr. Spring Rice,[1] I must say I believe you right, but I cannot but be grievously sorry for poor Brougham. I see of course his glaring defects. I know the mischief those defects are calculated to do to himself and to everyone with whom he is acting, but still I have worked with him for so many years and have at different times lived on such intimate terms with him, that I must lament, though I by no means censure, his being thrown overboard, when I fear there is no whale ready to receive him and after a limited time to replace him on dry land.

Nothing seems to have given him any suspicion of his fate. He constituted himself general protector of the Government, and he was even entrusted with the task of piloting the Municipal Reform Bill through the Tory Peers. His eagerness to defend the Prime Minister was not always accepted in the spirit in which the assistance was tendered, and his officious interference in every topic that came before the House did not contribute to strengthen his Parliamentary position. Campbell has been at pains to ascertain that there are 221 of his speeches reported in 'Hansard' for the Session of 1835.[2] It was now that after a lapse of fifteen years he resumed his advocacy of universal elementary education, and unfolded in a series of fourteen resolutions a scheme which serves as another milestone along the road to the Act of 1870.[3]

[1] Le Marchant, *Life of Lord Spencer*, 541.

[2] *Life of Brougham*, 471. The alphabetical index to them occupies twenty lines of an ample page.

[3] *Brougham's Speeches*, iii. 217. It was during his Chancellorship (in 1834) that the first annual grant of 10,000*l.* was made to the National Society and to the British Schools.

That he felt and bitterly resented his treatment is evident from the following letter to Lord Spencer :

As to office I have done with it. To be worried for years by the enemy, betrayed by the King, and then tried like a culprit on absurd charges out of newspapers by the party and colleagues I have ruined my fortunes for, and made myself a beggar for, is not suited *to my book*, I can assure you. . . . I go on day after day defending them, their only speaker. I never even have had one civil word from one of them, not one acknowledgment in speeches, while they loudly praise anyone who makes even a decent speech on the enemy's side.[1]

Meanwhile the compromise under which Pepys and his coadjutors were discharging the functions of the Chancellor had caused much discontent ; the arrears in Chancery were increasing while the work of the other Courts was getting terribly behindhand.[2] In the last weeks of the year it was resolved to put an end to the commission, and to the universal surprise Pepys, the Master of the Rolls, became Chancellor on January 16, 1836, with the title of Lord Cottenham, while the legal strength of the Whigs in the Upper House was reinforced by Bickersteth, the new Master of the Rolls, created Lord Langdale much against his will.

Since the close of the session Brougham had been in Westmorland suffering from a mysterious malady.

Your Lordship,[3] wrote the author of the *Runnymede Letters*, who is well informed of what passes in the Cabinet, must have been scarcely less astonished than the public at the late legal arrangements. Every post, till of late, must have brought you from the metropolis intelligence which must have filled you with anxiety almost maturing into hope. But the lion was suddenly reported to be sick, and the jackals as suddenly grew bold. The Prime Minister consulted Sir Benjamin ; [4] the serjeant surgeon shook his head, and they passed in

[1] Le Marchant, 548.
[2] *Vide infra*, 394.
[3] *Letters of Runnymede*, 32.
[4] Sir Benjamin Brodie.

trembling precipitation the Rubicon of their spite. When we remember that one voice alone decided your fate, and that voice issued from the son of Lord Grey, we seem to be recalled to the days of the Greek drama.

There is no authority beyond gossip for the veto of Lord Howick, though the relations between him and Brougham, strained in 1827, had been stretched to breaking point in July 1834. The real author of the exclusion was Lord Melbourne himself, whose easy-going habits led him to prefer a periodical stand-up fight in the House of Lords to perpetual wrangling in the Cabinet; and he salved his conscience with the excuse that he could not bring himself to force upon the King a servant whom his Majesty feared and loathed. Moreover there were acts of treachery of which Brougham had been guilty which must have helped to harden Melbourne's heart. When the jointure of Queen Adelaide was debated in Lord Grey's Cabinet, Mr. Charles Grant stood alone in objecting to the amount proposed as excessive. At Court on the following day he perceived a marked coolness towards him on the part of the Queen. After the publication in the 'Times' of 'the Queen has done it all,' her Majesty allowed it to be known that Brougham had revealed the whole discussion to her.[1]

Without endorsing Lord Campbell's verdict that Brougham was 'atrociously ill used,'[2] it is impossible to justify Melbourne's conduct. Common courtesy required some communication of his intentions, some effort to soothe the wounded feelings of the man who two years earlier had been the idol alike of the Whigs and of the populace. Yet Brougham was allowed to learn Cottenham's elevation from the newspapers. 'If Melbourne had treated me openly and kindly,' he complained afterwards with tears in his eyes, 'he might have done what

[1] *Quarterly Review*, cxxvi. 52.

[2] *Life of Brougham*, 476. It should be remembered that the elevation of Pepys was almost as much a grievance to Campbell as to the supplanted Chancellor.

he liked with the Great Seal, and we might have ever remained friends.' One cannot help contrasting the care which was taken to 'manage' Brougham at the moment when the formation of the Cabinet was in the balance, and when his hostility might have been fatal, with the callous disregard for his susceptibilities when the Ministry had safely weathered their first Session. It is true that unless Equity was to become a stationary science it was high time that an Equity lawyer should be placed at the head of the Court of Chancery. But there were means of breaking the fall, means for rewarding his great party services, which it required no great ingenuity to devise. Melbourne willed otherwise, and the Whigs paid the penalty.

Brougham was seriously unwell when the news reached him, and its effect may be better imagined than described. All his life he had been subject to fits of intense mental depression; the dark hour was on Saul at this moment, and though in the curious diagnosis which he has given of his symptoms he declares that 'good fortune produced no exhilaration, afflictions no additional depression,' it is impossible to suppose that so crushing a blow did not aggravate the disease.[1] He shut himself up in Brougham Hall, refused to see company, discontinued his correspondence, and gave ground for alarming rumours as to his ultimate recovery and his mental condition.

Apart from any specific malady the last years had given ample cause for depression. His union with Mrs. Spalding does not appear to have been productive of any

[1] The full account of this malady is to be found in a passage in Brougham, *Lives of Men of Letters and Science*, where he finds a parallel for Dr. Johnson's constitutional complaint 'in the case of one with whom I was well acquainted for many years, and who either outlived the malady which in him was hereditary, or obtained a power over it by constant watchfulness, diligent care and a fixed resolution to conquer it.' The details follow, and are given again with greater fullness in his correspondence with Mr. Forsyth (45, 49), in which he reveals what he calls his secret.

great happiness, though he was an affectionate husband, and his invariable kindness to his stepdaughters attracted the approving wonder of Greville. Their only child, his Tullia as he used to call her, was the victim of lifelong disease, to which she succumbed in 1839.[1] In December 1833 he had lost his brother James, who from boyhood had been his especial favourite, while another brother had died in 1829, the care of whose large family had devolved upon him. His venerable mother was in extreme old age, and on her and on his brother William, in whose favour he ultimately obtained a special remainder to the barony, his affections were now centred. Whatever charges may be brought against Brougham, he was an admirable brother and a devoted son. During the busiest time of his Chancellorship he wrote to his mother every day, and he never ceased to extol her rare qualities and her powers of judgment.

Nothing, however, could depress for long his exuberant vitality; and when Parliament met at the beginning of 1837 he was back in his place. Disraeli has drawn an imaginary picture of the confusion which his appearance would produce in the House of Lords.

> I can see the unaccustomed robes tremble on the dignified form of the lordly Cottenham, and his spick and span coronet fall from the obstetric brow of the baronial Bickersteth, Lansdowne taking refuge in philosophical silence, and Melbourne gulping courage in the goblets of Sion.[2]

[1] Her memory is somewhat oddly preserved in the name Eleanor Louise, which Brougham gave to his villa at Cannes, and in some Latin elegiacs from the pen of the Marquess of Wellesley in the vestibule of Lincoln's Inn Chapel. 'Her life,' wrote Lord Wellesley in a note to 'Primitiæ et Reliquiæ,' was a continual illness; but her sufferings were alleviated by an amiable, cheerful, lively and gay temper of mind, which was a constant source of consolation to herself and to her afflicted parents and family.' Her picture at Brougham was always kept hidden, and many years later her father broke down utterly on finding a drawing of her in Miss Martineau's house at Ambleside.

[2] *Letters of Runnymede*, 34. There is no foundation for Campbell's story that Lord Langdale was terrified into silence by the rumour of the ex-Chancellor's return, or that he declared he would 'sooner

But though Brougham was fully determined to be avenged, he was prepared to bide his time. The health of the King was failing, and he awaited the demise of the Crown to test for himself whether Royal displeasure was the real cause of his exclusion. And he had high hopes from the new reign. In past years he had been the confidential adviser of the Duke of Kent, who had named him as one of the trustees for his settlement on Madame St. Laurent.[1] The Duchess had continued to consult him even when on the Woolsack, and a good deal of William's dislike for his sister-in-law may be attributed to the belief that she was under the wing of Brougham. The character of the Princess Victoria was as yet an absolute enigma, but it was no very preposterous supposition that she would be inclined to put her trust where her mother had for long reposed it.

As we know, the young Queen, from the first hour of her succession, surrendered herself, without reserve, to her constitutional advisers; Lord Melbourne enjoyed under her an influence and position such as had never been his lot with William, and Brougham saw the avenue to office more firmly closed against him than before. From the beginning of the reign he took up an attitude of hostility towards the Melbourne Government from which he never swerved. Those who had fancied that he would settle down into a 'clever, fidgety, gossiping, spiteful dowager' had strangely underrated his powers. Early in the Session he made an onslaught upon the settlement of the Civil List, and attacked in particular the additional provision for his old friend the 'Queen-mother,' as, by a strange slip, he designated the mother of the Queen; and the debate gave rise to a violent passage of arms with Lord Melbourne, in which, however, the latter more than held his ground.

face the devil than Harry Brougham.' Langdale had stipulated on accepting his peerage that he was to be free from all party obligations, and Campbell had an especial grudge against him for depriving him of the coveted Mastership of the Rolls.

[1] Creevey, i. 271.

With the new year came the grand opportunity for paying off old scores and at the same time figuring as a champion of popular rights. The long simmering discontent of the French Canadians had boiled over in civil war, and in the spring of 1838 Lord Durham left England as High Commissioner 'for the adjustment of certain important questions depending in the province of Upper and Lower Canada,' and also as Governor-General of the British provinces in North America. A loosely drawn Act [1] suspending the Legislative Assembly of Lower Canada purported to give unlimited and despotic power to the High Commissioner and his Council. And, in spite of the applause with which Lord Durham's appointment was greeted from all sides, there must have been some of his friends and former colleagues who nurtured apprehensions as to his qualifications for so delicate and arduous a mission. He reached Quebec on May 29, and in July the English public learnt of his Ordinance transporting eight of the rebel prisoners to Bermuda and threatening the death penalty on Papineau and fifteen others if they returned to Canadian soil. Whatever might be said as to the policy of these high-handed proceedings, there could be little question as to their unconstitutional character, and the sentence of transportation to a British colony outside his own jurisdiction was clearly in excess of Durham's powers.

Brougham was not slow to seize the opening. His early friendship with Lord Durham had long been turned into gall; as Chancellor he was credited with having kept him out of the Cabinet during the reconstruction of 1834,[2] and the two Peers had exchanged mutual defiance at political dinners and in the Press. The Ordinance had delivered one enemy into his hand, while enabling him to place another in the dilemma of deserting a subordinate or facing a Parliamentary storm. On August 9 Brougham

[1] 1 & 2 Vict. c. 9.

[2] Melbourne, it may be mentioned, was equally obdurate in 1837. See Walpole, *Life of Lord Russell*, i. 285 *n.*

introduced a 'Canada Government Act Declaratory Bill'[1] which professed to elucidate the true meaning and character of the original measure, and, in terms exquisitely humiliating for the High Commissioner, set out his misconception of his powers and conferred an indemnity upon him for the 'evil acts' of which he had been guilty.[2] He vowed that never until this night had he heard, and he little expected that in their lordships' House, 'the highest court of justice in this kingdom, the temple of British liberty,' he ever should have heard 'the ears of their lordships outraged and insulted by the principles which the noble Viscount has promulgated.'[3] And though his criticism of the Ordinance was by no means unimpeachable on legal grounds, he boldly challenged any one of the judges who were in the habit of construing Acts of Parliament to declare that the Act in question authorised the steps taken by the Governor-General of Canada. Neither Cottenham nor Langdale would answer him, and he had already forced through the second reading of his Bill by a majority of eighteen against the Government, when Lord Melbourne capitulated, and, on behalf of the Ministry, accepted the measure under protest, announcing at the same time their intention to disallow the Ordinance which had caused the uproar.

How Durham resigned and came home to die, leaving as a legacy that famous Report, his share in the composition of which is so widely disputed, are matters of history. It was a costly victory for Brougham. Miss Martineau, who was for nearly thirty years without a rival in her own field of contemporary history, poured out all the vials of her indignation on the man who, as she declared, had slain the high-souled champion of the people's cause.

The whole Ministry were fairly bullied by Lord Brougham into desertion of Lord Durham, after having upheld and thanked him for the very acts for which they extinguished

[1] 1 & 2 Vict. c. 112. [2] Hansard, xliv. 1058. [3] *Ibid.* 1025.

him at the bidding of his cruel foe. It was a shameful chapter in the records of the Whig Government, and Lord Brougham was ever after without political character and social influence.[1]

More recent and calmer writers have passed a less unbalanced judgment. Durham's own conduct and the original failure of Parliament to define his powers rendered a declaratory Bill of some sort indispensable.

Encouraged by this exhibition of Ministerial weakness, Brougham redoubled his assaults upon a body of men who had clearly lost confidence in themselves. During this and the following Session, he displayed an activity and a concentrated bitterness which wrung from Lord Melbourne a retort that left his assailant for the moment without power of rejoinder.

> I appeal to the candour of everyone who has listened to the marvellous display of ingenuity in argument and versatility of illustration with which we have been favoured by the noble and learned Lord, whether the reasons must not have been perfectly overwhelming which compelled us to forego the advantage of including him in the Administration.[2]

It would be tedious to dwell in detail on Brougham's Parliamentary exploits during these years. In 1839 the Bedchamber crisis imported additional acrimony into politics, and Brougham was betrayed into language in which the Queen was not spared. 'Such an oration as no other man in existence is capable of,' was Greville's comment,[3] 'devilish in spirit and design, but of superhuman eloquence and masterly in execution.' Campbell's suggestion that he had any expectation of being included in the Tory Cabinet which was strangled at the birth is highly improbable, and on the other hand

[1] See Miss Martineau's *History*, ii. 382 *et seq.* The passage quoted in the text is from her *Biographical Sketches*, 162.

[2] Torrens's *Life of Melbourne*, ii. 251. [3] 2nd ser. i. 213.

there was a feeling among some of the occupants of the Whig benches that the time had come when, in view of the Ministerial weakness, Brougham's offences might be condoned. Lord Spencer, who remained constant to his determination not to take office, gave expression to this sentiment in a letter to Lord Melbourne : [1]

I think it might be possible to relieve yourselves from a very great annoyance and from one which tends to weaken you. What I mean is that I think it possible that you may conciliate Brougham. His power and influence over the House of Lords is much greater than I imagined it to be, and I feel confident, without having had any communication with him to make me so, that he would be conciliated if you offered to him to join the Administration, whether he would do so or not. I think he would. I admit there are great objections to this. He has made attacks which would compel all of you to conquer a good deal of unpleasant feeling before you could act with him. As for himself, you and I know him well enough to be sure that, if he accepted your offer, he would at once forget that he was ever opposed to you, and would act as cordially with you as he ever did with any party with which he was connected.

But the Prime Minister was unmoved, nor is it easy to believe, after what had passed so recently, that Brougham would have been either an endurable colleague or any source of real strength. He was not the man to join a sinking ship, nor was his ire sufficiently glutted against his enemies. Girt with a whip, like some vengeful Tisiphone, he drove his victims hither and thither.[2] And when Lyndhurst joined in the hunt there must have been days when the Ministerial spokesmen in the Upper House rued the outrageous fortune that ever exposed them to such slings and arrows. It was magnificent sport, but it did ineffaceable harm to the dignity, the efficiency, and the best traditions of the House of Lords.

[1] July 31, 1839. *Melbourne Papers*, 401.

[2] Ultrix accincta flagello
Tisiphone. *Aen.* vi. 570.

In the eyes of Brougham himself nothing could be freer from the imputation of faction than his conduct at this time. On his own showing the silver streak of consistency was to be traced throughout all his vagaries. He alone was treading the path of Conservative reform, equally opposed to reckless innovation, and to reactionary deviation from the principles of 1832. When he found his old associates objecting to improvements on the Reform Bill, trifling with slave emancipation, framing their Civil List upon exploded notions, or exercising undue influence over the Royal Household, he felt it his duty to smite them friendly and reprove them; and if his precious balms did occasionally break the head of Lord Melbourne, or Lord Lansdowne, or Lord Glenelg, it was a regrettable incident for which the responsibility rested anywhere but with the smiter. I am afraid that this pleasing view of Brougham's Parliamentary tactics was not recognised at the time, and has not received general acceptance since.

And at this moment, when he required every ounce of reputation for sobriety and earnestness in his self-imposed capacity of general censor, he indulged in one of those extraordinary freaks which savour of something much more pronounced than eccentricity. On Monday, October 21, 1839, a report spread like wildfire through the London clubs and out into the streets that Lord Brougham had been killed in a carriage accident near his home in Westmorland. Crabb Robinson has described how, at the Athenæum, excitement broke the icy fetters of club etiquette, and how John Gibson Lockhart spoke to him, though they had never been introduced. The intelligence was contained in a letter signed by Mr. Shafto, who had been one of the carriage party, and it was addressed to Mr. Alfred Montgomery. Montgomery rushed off to Lady Blessington, and then started in a post-chaise to break the news to Lord Wellesley at Fernhill.

The Press treated the authority as being too distinct and circumstantial to admit of doubt, and on the follow-

ing day the papers, with the solitary exception of the 'Times,' pronounced the accustomed funeral oration on the departed statesman. On Wednesday came the *démenti*. The carriage indeed had been upset, but no one had been injured, and on Thursday Mr. Barnes, who knew his Henry Brougham better than most men, took the incident as a text for an 'appreciation,' in which the lash was laid on with the skill of a practised flagellant, but with such rare discrimination, that the article, sixty-six years after it was written, still ranks among the best summaries of the victim's meteoric career.

That the rumour originated from Brougham Hall and with Brougham's sanction is beyond dispute. He was promptly taxed with it in the current issue of the 'Examiner' in a biting article which bore the motto, 'And is old Double dead?' Mr. Shafto firmly denied that he had written the letter to Mr. Montgomery; he is generally believed to have dictated it. And while the victim was intensely annoyed at the upshot of what his friends described as a stupid and heartless hoax, the annoyance was mainly due to the uncomplimentary tone of the Press notices and to his inability to convince the world that he was not art and part in the plot. The Duke of Cambridge chased him round the room exclaiming, 'Oh, by God, you wrote the letter, oh, by God, you wrote the letter!' Whether sheer love of mischief, curiosity to obtain a peep at the verdict of posterity, or the hope of arousing sympathy, was the predominant motive, it is impossible to say.

Brougham had scarcely emerged from this scrape before he was again exposed to ridicule. In the spring of the following year he published a translation of Demosthenes upon the Crown, 'with notes, Greek text, and various readings selected from Wolff, Taylor, Reiske, and others.' For such a task he had not the slightest qualification; he possessed only a superficial knowledge of Greek, his version was as bald as it was inaccurate, and he betrayed a really remarkable ignorance of the

polity of ancient Athens, of her legal procedure, and her history. Lord Lyndhurst had predicted that the result would be 'nothing to brag on,'[1] and the 'Times' was again to the fore with a vindictive piece of criticism for which the classical shortcomings of what it termed a melancholy and laughable exhibition were hardly a sufficient justification.[2] Under pretext of 'tearing the mask from imposture and reducing a puffed-up leviathan to his natural dimensions in the republic of letters,' the writer examined the version line by line and paragraph by paragraph.[3] And for half a dozen of its issues the critic was allowed to devote two columns daily of the 'Times' to a minute verbal exposure of blunders and inaccuracies; it would be curious to see what effect on the circulation of that organ would be produced by a similar exercise to-day, and somewhat entertaining to listen to the comments of the opponents of compulsory Greek.

This douche of icy water was rendered the more disagreeable by the literary reputation which Brougham had recently acquired from his 'Historical Sketches of Statesmen and Philosophers in the time of George III.,'

[1] Lyndhurst, so Brougham asserted in the preface, while giving him no direct encouragement, had suggested that he should try his hand at a metrical version, somewhat after the manner of Pope's *Imitations of Horace*! Brougham further vouches that he had submitted the translation to Dr. Arnold, and received approval and encouragement from him; during his Chancellorship Brougham had vainly pressed preferment on that great head master and smiter of the Oxford Malignants.

[2] 'Though the Times made it clear he was perfectly lost in his
Classic attempt at translating Demosthenes,
And don't know his particles;
Who wrote the articles
Showing his Greek up so, is not known very well;
Many thought Barnes, others Mitchell, some Merivale.'
Ingoldsby Legends.

[3] Four years earlier Disraeli (*Letters of Runnymede*, 29) imagines him occupied in translating his treatise on natural theology into German on the Hamiltonian system. 'The translation of a work on a subject of which you know little into a language of which you know nothing, seems the climax of those fantastic freaks of ambitious superficiality which our lively neighbours describe by a finer term than quackery."

the first and second series of which were published in 1839.[1] The sketches are of unequal merit, but Brougham was a born memoirist. He had plied his craft in the pages of the Edinburgh Review and he had enjoyed exceptional advantages from his intimacy with Lady Spencer and other *grandes dames* of a past generation to whom the personal side of Court and Parliamentary history was an open book. Where he confines himself to his own recollections, to the men with whom he was acquainted, to the traditions he had received at first hand, he has achieved a remarkable portrait gallery of statesmen, lawyers, and sages.

A year earlier he had collected his principal speeches in a four-volume edition, adorned with prefaces and introductory matter which for some reason or other he chose to throw into the third person. Written as these were at a period when the quarrel with his old associates was most acute, we are not surprised to find that the Whig dogs have a lively time, and Brougham seldom misses an opportunity of reviving an old grievance or depreciating former friends. And it is somewhat humorous, when we remember the terms in which Creevey habitually wrote about his friend 'Wicked Shifts,' that Brougham should have taken a eulogy on his old colleague in the Liverpool election as the text for a fierce onslaught on 'the jealousies, the personal predilections and prejudices which so often distracted the councils' of the Whigs. Scattered up and down throughout these volumes there is much material for the historian and biographer, provided the salt is liberally supplied. But as a whole they suffer from the supreme demerit of being dull. The wealth of detail, not always of a trustworthy character, is overwhelming, the sarcasm and invective have lost their sting, and the interest of topics which in their time shook thrones and governments has now largely evaporated.

The enormous scale of Brougham's literary output is not the least remarkable manifestation of his activities.

[1] A later edition was translated into French.

A bibliographical list, to be found at the end of the collected edition of his critical, historical, and miscellaneous works,[1] enumerates 113 separate publications. Many of them are purely ephemeral pamphlets; but they include, in addition to the works already mentioned, two series of Lives of Men of Letters and Science in the reign of George III.; a discourse on natural theology prefixed to an edition of Paley; tracts mathematical and physical; and a 'History of England and France under the House of Lancaster.'

The strangest offspring of his brain finds no place in the catalogue. In the days following the death of his daughter, a bereavement which well-nigh broke his heart, and the memory of which never ceased to haunt him, he sought to raise a monument to her he had lost by making her the heroine of a Philosophical Romance. The novel was actually printed in 1844 in orthodox three-volume shape with a dedication to Rogers, and three or four copies were given to private friends, including Croker and Lyndhurst.

But it was at once suppressed, the author wrote to his friend, the late Mr. William Forsyth, Q.C.,[2] when I found from one of the four persons whom I had let see it that the mistakes were so enormous, such as fancying that one character was Macaulay—a most profound mathematician who played chess on a geometrical theory, and a profound lawyer—whereas poor Tom M.[3] hardly knew a triangle from a square, and had little or no legal knowledge. It was drawn from a man well known on the Northern Circuit, F. Raincock, a senior wrangler and great lawyer; other mistakes of the like kind were made, though no one could doubt Croker and Lyndhurst; indeed the names indicated

[1] In eleven volumes; 2nd edition, 1872–3.

[2] *Letters of Lord Brougham to William Forsyth*, 80. Other copies got into circulation. That at the Athenæum contains a memorandum from the donor that it was one of three purchased by him in 1872.

[3] Lord Macaulay had died a couple of years before the date of the letter. In another place Brougham writes to the same correspondent, 'because the person was represented as a great bore, who talked people to death, they fancied it my friend Tom.'

this, Croasse and Chapeley. Another reason for the suppression was that a Philosophical Romance without blasphemy or indecency would have proved wholly unsaleable.

Whatever his motives, the author was well advised, for 'Albert Lunel' is an unspeakably dull production, though the character of the Baron, 'the repulsive plainness of his exterior and his somewhat brusque though sufficiently high-bred manners,' forms an interesting example of self-portraiture. The Baron is depicted as a person of extraordinary faculties and great attainments, of whom it was said that since his departure from the University of Montpelier he slept with one eye open and could write with both hands at the same time. His disposition was somewhat lofty and ungracious, yet his

mature years and great capacity point him out to the friends of improvement as their powerful and natural leader, who has only to struggle against the obstacles interposed by the weight of years.

Long before the completion of his Philosophical Romance, Brougham's craving for vengeance had been gratified. On June 4, 1841, a vote of No Confidence was carried against the Government, and the consequent appeal to the country went heavily against the Whigs. It was thought that Melbourne would best have consulted his own dignity by a prompt resignation, but he preferred, according to constitutional usage, to face Parliament. On August 24 Brougham struck the last blow against the man who had humiliated him, ostracised him, deceived him. In Campbell's phrase he rose to trample on the dead body of Melbourne.

When the ejected Ministers and their followers crossed the floor of the House of Lords, they found Brougham seated among them cheerful and unembarrassed. He shook hands and chatted as freely and as recklessly as if they were back in the days of 1834 and a sponge had been passed over the intervening years. His permanent place continued to be on the Opposition benches, though his

restless spirit forbade him to remain quiet in one spot for more than a few minutes; he would sit on the edge of the Woolsack, talking to Lyndhurst, and then wander off to chat with Peers on either side, or with strangers under the gallery. His presence in their midst was no slight annoyance to those whom he opposed nightly by voice and vote, for his support was almost invariably given to Ministers. But considerations of delicacy were alien to Brougham's mental composition; like the Young Lion in 'Friendship's Garland,' he had long since forgotten, if indeed he had ever known, the word. And, strangely enough, as time went by a complete reconciliation took place between Lord Melbourne and himself.

The address and insinuation of Brougham are so great, Sir James Mackintosh had written once in his journal,[1] that nothing but the bad temper, which he cannot always hide, could hinder him from mastering everybody as he does Romilly. He *leads* others to his opinion; he generally appears at first to concur with theirs, and never more than half opposes it at once. This management is helped by an air of easy frankness that would lay suspicion itself asleep.

Even after their last deadly breach Brougham had recovered some of his old ascendency over Lord Grey and had been more than once his guest at Howick, and now Melbourne was submitted to the same process. When Lord John Russell went to consult him in 1847 about the Chancellorship, he found Brougham established on an intimate footing with their old chief,[2] and on Melbourne's death in the following year it was discovered, to the surprise and no small disgust of his family, that he had appointed Brougham one of his executors. There must have been no ordinary fascination about a man who could accomplish this, and by a strange coincidence the same mark of confidence was reposed in him a few months afterwards by Queen Adelaide, whom he had so shamefully and unchivalrously traduced.

[1] January 30, 1818, *Life of Mackintosh*, ii. 345.
[2] Campbell, *Life of Brougham*, 549.

Private blandishments were not allowed to interfere with a vigorous support of the Peel Ministry or with perpetual tilts at their predecessors. After the illness and retirement of Lord Melbourne the Whig Peers were as sheep without a shepherd, and scarcely attempted any regular opposition, while the entrance on the scene of Lord Campbell, who for a few weeks had been Lord Chancellor of Ireland, added a fresh zest to his life. Brougham wrote to Macvey Napier [1] that Edinburgh was responsible for 'the two most perfect bores that had ever yet been known in London, Tom Macaulay in private society and Jack Campbell in the Lords.' But 'Jack Campbell's' gravity, his protestations, his Scotch precision, were as irresistible to Brougham as to Lyndhurst; and between them the great twin brethren led their victim a merry dance. Campbell, be it said, was not a man to be put down easily, and according to his own belief he dealt some stout blows when to the eye of the public he was hopelessly outclassed.[2]

His attitude of exaggerated friendliness to the Government and his airs of tutelage were not altogether acceptable to those whom he had taken under his 'dangerous and discreditable protection.' [3] There is an 'H. B.' cartoon in which the Duke of Wellington is represented as a showman with Brougham as a pasteboard marionette whose wires he is pulling. He was not without justification when he assured his friends that, on the contrary, it was he who held the strings that moved the Duke.[4] But certainly

[1] *Selections from the Correspondence of the late Macvey Napier*, 392.

[2] *Life of Lord Campbell*, ii. 166, 174, and see Hansard, lxv. 731.

[3] Greville, 2nd ser. ii. 257.

[4] For some years past Brougham had attached himself to the Duke of Wellington, and was in the habit of smothering him with adulation—finding the iron warrior's weak side by unmeasured flattery of his oratorical powers (*Life of Lord Campbell*, ii. 177). He was a visitor at Walmer Castle for the Dover festival in August 1839, and in his inevitable speech spoke hyperbolically of 'the Mighty Captain—I invoke both hemispheres—bear witness, Europe! bear witness, Asia.' By a little conspiracy a shower of letters reached Brougham from London, in each of which the orator was reminded that Asia and Europe were conventionally at least supposed to be in the same hemisphere.

the ex-Chancellor had made for himself a position in the House of Lords which was a growing embarrassment to both political parties. Not content with sitting on the edge of the Woolsack he had little hesitation in making himself spokesman for the Government and explaining their measures for them. There was no one to keep him in order. The Duke was too deaf, Lord Aberdeen was absorbed in the affairs of the Foreign Office, and Lyndhurst, threatened with blindness, was beginning to feel the weight of years. Finally, it was decided that Lord Stanley should be called up to the Peers and bring the irrepressible Brougham to his bearings. He took his seat on the last day of the Session of 1844.

The annoyance of the Conservatives with their too officious ally had reached a climax. The Judicial Committee of the Privy Council was of all Brougham's legislative achievements the one of which he had especial reason to be proud. In the ten years of its existence it had done admirable work, and he himself had been one of the most indefatigable of its members, allowance being made for his annual journey to Provence. He now came forward with a Bill to extend the jurisdiction of the Committee, and to amend its constitution by creating a permanent president with a salary of 2,000*l.* a year and precedence immediately after the Lord Privy Seal. The proposition appears reasonable enough to-day in the light of the enormous importance which that tribunal has come to assume, and it had formed part of Brougham's original scheme. But in 1844 there seemed no sufficient ground for alteration, especially as a parliamentary return showed that the cause list had been absolutely cleared. And the new

' Confound the fools,' he exclaimed at last, ' mayn't I halve my orange longways or crossways as I think fit ? ' (*Quarterly Review*, cxxvi. 59). His presence at the dinner had been unsolicited, and was a source of some annoyance to the local notabilities, who considered it a purely Kentish function ; Lord Guilford in particular, to whom had been assigned the toast which Brougham appropriated, was only pacified on learning before dinner that the latter's speech was then actually in the printer's hands.

post was so obviously intended for Brougham himself that, although Lord Lyndhurst maintained stoutly that a permanent head of the Court was desirable, the project was regarded with general hostility. It was not so much the proposed salary which inflamed the public mind as the attempt on Brougham's part to obtain by a side wind the precedence which he had forfeited on his descent from the Woolsack; it was bruited that, having been disappointed in the effort to obtain the Lord-Lieutenancy of Westmorland and a vacant Garter, the Presidency of the Judicial Committee, with the *pas* over dukes and marquesses and earls in the House of Lords, at the levees and at the drawing-rooms, was to be his consolation prize.

In vain Brougham protested that the intention of the Bill was to give precedence to the President only while actually sitting, a precedence which required no enacting words; and, as it was pertinently observed, if this were the case, 'why drag the Privy Seal into the Bill, for it was not suggested that he should form a member of the Court?'[1] At last a stinging article in the 'Morning Chronicle' from the pen of Lord Clarendon brought Brougham to his feet with a furious disclaimer of having ever harboured the thought of becoming a candidate for the post, though he declared it to be a perfectly notorious fact that he had refused such an offer three times over.

No one but Brougham himself can be his parallel, commented Greville;[2] no other man would have dared to get up, and, in the presence of at least half a dozen men who know the whole truth, deliberately and vehemently tell a parcel of impudent lies.

The new judgeship was dropped, and the Bill, with all its sting gone, was allowed to pass. It is a pity that this and other episodes have been only too efficacious in obscuring the great services rendered by Brougham as *de facto* if not *de jure* President of the Committee.

[1] Greville, 2nd ser. iii. 234. [2] *Loc. cit.*

Nor was he less active in the judicial business of the House of Lords. We have seen elsewhere the part played by him in the hearing of O'Connell's writ of error.[1] He deeply lamented the decision about to be pronounced, 'a decision which will go forth without authority and come back without respect,' but he joined earnestly in the appeal to Lord Redesdale and the other Tory stalwarts not to destroy the authority of the House as a court of justice. His judgment in the Irish marriage case [2] was not followed by the majority, but the justness of his views as to what the law *ought* to be was recognised by the passing of an Act in the following Session to remedy what was an admitted hardship.

In the events which led to Peel's overthrow he took no part; he had, with some aberrations, been a free trader since his entry into public life. He now gave his fullest support to the Corn Law Abolition Bill, taking care at the same time to express his dislike for the ways and members of the Anti-Corn Law League and of Cobden in particular. His eulogy on Peel is one of the finest tributes ever paid to that much-enduring, often-changing minister, and it is marked by a freedom from exaggeration, and a restraint, which are in pleasing contrast with some of his panegyrics. When Lord John's Cabinet was formed and the Whigs once more crossed the floor Brougham did not go with them, but remained to greet the allies with whom he had for long been co-operating.

[1] *Vide supra*, 145.

[2] The Queen *v.* Millis, 10 Clark and Finnelly, *vide supra*, 144.

CHAPTER XVI

LORD BROUGHAM'S LATTER DAYS AND DEATH

1846–1868

WITH the accession of the Whigs to office in 1846 and their victory at the polls in the following year, it might have been supposed that Brougham's hopes and ambitions had finally disappeared. But the line of succession in the legal hierarchy was very uncertain, and for some time yet he refused to accept defeat. 'Why is Brougham so interested in the Navigation Act, eh?' said Lyndhurst to the assembled Law Lords. 'Because he has been so long engaged in the Seal fishery.' But as Cottenham was succeeded by Wilde, and Wilde gave place to Sugden, it became apparent that the game was over. Finally, when Lord Cranworth became Chancellor in the Coalition Cabinet, Brougham seems to have felt little mortification. It was some gratification that Lord Truro, whom he had alternately bullied and patronised,[1] should be forced to join him in the shades of retirement. 'Reft of the crown,' he yet could interfere to prevent others from wearing it, and Campbell declares that when his name was mentioned for the Seals, in view of a contingent vacancy, Brougham worked might and main against him.[2] On the other hand, the awkward *impasse* which arose over Lord Denman's refusal to resign the Chief Justiceship gave full scope to his propensity for meddling, exercised this time on Campbell's behalf.[3] It is not too unchari-

[1] *Vide infra*, 454.

[2] In one of his illuminating sidenotes, Campbell labels the incident 'Intrigue in consequence of the dangerous illness of Lord Cottenham.' *Life of Brougham*, 548.

[3] *Life of Lord Campbell*, ii. 267.

table a conjecture that Campbell's chance of the Seals may have seemed to Brougham more remote than ever if he were once settled as head of the Queen's Bench.

The Parliament which sat from 1847 to 1852 was the last in which Brougham took a prominent part. He still thundered and fulminated against the Whigs, but without the fire and fury of old. He was less formidable as a follower of Lord Stanley than as a free lance, and Earl Grey, the son of his old chief, who now led the House of Lords, was better fitted to cope with him than Melbourne; unlike his father, he had neither forgotten nor forgiven the family wrongs. But, above all, Brougham missed the joyous companionship of Lyndhurst, whose eyesight permitted him only an occasional appearance at Westminster. The 'old, true times' were dead—

> When every morning brought a noble chance;

and Brougham himself, like Giant Pope, was getting somewhat stiff in the joints.

He showed, however, his old pugnacity and doggedness in his speech against the repeal of the Navigation Acts in 1849, when the Government, who had staked their existence on the division, only scraped a majority of ten by calling their proxies. And his thirst for legislation knew no slaking. On one single evening he tabled nine bills for reforming various branches of the law of England, in one of which he recurred to his hobby of Courts of Reconciliation. But, once deposited with the Clerk of Parliament, he was satisfied, and pushed them no further. Indeed, when we take account of his marvellous energy, prolonged for over fifty parliamentary years, Brougham has left comparatively little behind him that bears his own hall-mark. He was matchless at exposing an abuse; to devise the appropriate remedy was another matter.

Brougham had neither the mind of the codifier nor the patient skill of the conveyancer. With the assistance

of Mr. Bellenden Ker he drew Bills on every subject beneath the sky, and his path was littered with clauses and amendments ; but it is not on his accomplishments as a parliamentary draughtsman that his fame has ever rested. It is true that during his lifetime a volume was compiled by the late Sir John Eardley Wilmot, entitled 'Lord Brougham and Law Reform,' in which he is credited with the authorship of nearly every measure connected with legal reform from 1828 to 1856, and with the parentage of every statute that embodied a principle which he had ever advocated. Some forty Acts are thus assigned to him, besides fifty Bills introduced by him at one time or another. The precise parentage of an Act of Parliament is always difficult to determine, but on no ground of equity can Lord Tenderden's Acts or the legislation for carrying out the recommendations of the Real Property Commissioners be assigned to Brougham.

In 1844 he had founded the Law Amendment Society, whose Bills he regularly introduced into the Lords, and he established as its organ the 'Law Review.' That periodical, in one of its earliest numbers, contained a caustic review of Lord Campbell's 'Lives of the Chancellors,' and the noble biographer, in return, brands it as a 'tiresome vehicle of self-laudation and vituperation of others.' Year after year Brougham published a sort of encyclical, addressed now to Lord Denman, now to Lord Lyndhurst, in which the sessional work on law reform was passed in review, and the cases which cried most urgently for immediate action were indicated. But the opposition which he offered to the Common Law Procedure Act of 1854 makes one somewhat cautious in appraising his powers of discrimination. The House of Lords, and its legal members especially, who each had their own little allotment wherein intruders were unwelcome, and who were by no means exempt from professional jealousy, began to weary of the nightly tale of Brougham's achievements and aspirations.

About the year 1850 he gave up sitting in the Privy

Council, but he continued, till almost the close of his life, to assist in the judicial deliberations of the House of Lords, not always to the satisfaction either of his colleagues or of the public. The 'Daily News' said brutally that

> the number of cases *knocked off* in the Lords had been considerable; but whether they have been gravely and attentively heard, maturely considered, and satisfactorily disposed of, is a question which will not be agreeably answered on enquiry among the able men who for six weeks past have been pleading at the Bar of the House of Lords.

Brougham did not think it beneath his dignity to complain in Parliament of so 'vulgar and low-bred an expression' as 'knocked off,' and of the 'stupid ribaldry as to his motives in sitting as judge.'[1] He was complimented and soothed down, but the galled jade evidently winced. When it was attempted to strengthen the judicial element in the Lords by the creation of Life Peers, he helped Lyndhurst to organise the successful resistance.

Gradually he ceased to occupy himself with party politics, and his old feuds and enmities died down and ceased. He even forgave the Whigs sufficiently to meet his old antagonists in friendly social intercourse. Charges of malevolence, of vindictiveness, of long-cherished spite are brought freely against Brougham by those who knew him well, and I should be sorry to hold a general retainer on his behalf. There is a heavy tale of severed friendships. But he was, during his later years at any rate, one of the most placable of men—a virtue due rather to his powers of forgetfulness and self-delusion, and to his liveliness and sociability, than to any special magnanimity. There was hardly a man with whom he had quarrelled who, at one time or another, did not partake of his hospitality at Brougham Hall or in the Villa Eleanor Louise.

[1] Hansard, cxiii. 841.

In the autumn of 1848 Lord Campbell wrote enthusiastically of his reception at the former of these abodes. His 'noble and learned friend' was at that moment much occupied with the antiquity and greatness of his race. He had recently opened the coffin of Sir Edward de Broham, a crusading ancestor; he had brought away the skull, framed it, and placed it in the hall under the purse which had once contained the Great Seal of England.

> Being called upon to admire the grinning crusader, I could only say that I was much struck by the family likeness between him and his illustrious descendant, particularly in the lengthiness of the jaw.[1]

But it was at Cannes, in his garden stocked with oranges and olive-trees, where the rays of the rising and the setting sun faintly gilded the mountains of Corsica, that his native warmth of heart and his extraordinary gifts of fascination in talk found their fullest display. The 'ampler ether,' the 'diviner air,' seemed to tranquillise his mercurial disposition. Yet Miss Martineau[2] has recorded a curious little incident as an illustration of his restless incapacity for repose even in that favoured spot. A neighbour had come over to take a view of the château, and a group of guests in the balcony, by the newly introduced daguerreotype process:[3]

> The artist explained the necessity for perfect immobility. He only asked that his Lordship and friends would keep perfectly still 'for five seconds,' and his Lordship vehemently promised that he would not stir. He moved too soon, however, and the consequence was a blur where Lord Brougham should be.

The citizens of Cannes have not been unmindful of the stranger who sojourned so long within their gates.

[1] *Life of Lord Campbell*, ii. 244.

[2] *Biographical Sketches*, 164.

[3] Brougham himself claimed to have been on the point of anticipating photography by one of his youthful experiments.

The hundredth anniversary of his birth was celebrated in true French fashion by a flood of eulogistic oratory, and his statue occupies a prominent position in the Allées de la Liberté. Brougham had ever been a warm friend of our neighbours, and he had done more, perhaps, than any single individual to promote a good understanding between the two nations. The French were captivated by his genius, his versatility, his eccentricities. During the monarchy of July he was an ever welcome visitor at the Court of Louis Philippe, and he would drop in to tea at the Tuileries without any ceremony, not unfrequently bringing with him some companion whom he had assured that the formality of an invitation was unnecessary. The shepherd's plaid trousers with which Doyle habitually invests him were as familiar on the boulevards as in the House of Lords. And at one of his rare attendances at Buckingham Palace he is said to have violated all etiquette by offering to carry to his friend the King of the French any letter or message with which her Majesty might entrust him.

Yet no sentiment for Louis Philippe deterred him, on the fall of that monarch, from plunging into one of his most famous scrapes. He conceived the idea of entering the National Assembly as representative for the department of the Var in which his château was situated, and thus inspiring his English countrymen with the same confidence which he himself professed in the new Government. To become a candidate, or even a voter, an 'Act of Naturalisation,' as a French subject, was required, and he promptly applied for one to M. Crémieux, the Minister of Justice. M. Crémieux responded that he would not presume to think that the 'late British Chancellor' was unaware of the necessary consequences of so important a demand.

> You are no longer Lord Brougham, you become Citizen Brougham. You lose forthwith all titles of nobility, all privileges, all advantages of whatever nature which cannot harmonise with our laws of equality between all citizens.

It is an extraordinary thing that one who, throughout all his life, had constantly to deal with questions of domicile and nationality should have been blind to these elementary considerations; but 'the late British Chancellor' was still obtuse, and insisted that, while retaining his privilege as an Englishman only in England, he could be in France a full citizen of the Republic. Finally, it was explained to him by the Minister of Justice, whose patience was getting a little worn, that in order to become a Frenchman he must cease to be an Englishman, and that until he had abdicated completely and everywhere his quality of British subject, his application could not be conceded.

Brougham curtly renounced the project, but when it was discovered by the members of the Provisional Government that he had launched an attack upon them in the House of Lords, while still in the thick of his correspondence with M. Crémieux, they retaliated by publishing the whole of the letters. And the 'strange rumour' to which Lord Lansdowne had alluded in the course of debate was translated into absolute fact. This latest contribution of Brougham's to the gaiety of nations was received with a chorus of mirth on either side the Channel. 'Punch' had an admirable cartoon of this modern 'Citizen of the World,' and the 'Times' was even happier in its imaginary picture of

> Citoyen Brougham, fallen a sacrifice to the rising demagogues of the New Mountain, and led off to the Place de la République in a cart, devoting the brief minutes of his passage to chanting with sincere enthusiasm and strong Northumbrian burr,
>
> Mourir pour la patrie
> C'est le sort le plus beau et le plus digne d'envie.

The allusion to the burr was a hit at the accent in which Brougham clothed his conversational French. He is said to have spoken the language with perfect ease and rapidity, never hesitating for a word or a sentence. But the result, which Macaulay dubbed *Broughmee*, was attained by reproducing his thoughts in their foreign

dress without the smallest regard for French idiom, a fact which never deterred him from communicating his scientific observations to members of the Institut [1] in their native tongue with such assistance as is described in the following passage. One morning in 1850 an acquaintance, easily recognisable as Abraham Hayward, called for him at Meurice's,

and found him in a squabble with a Frenchman whom he had engaged to translate a scientific paper, and whom he ended by calling *bête comme une oie*. They then got into a remise and drove to a celebrated optician's in the Faubourg St. Germain quarter, where Brougham occupied a full hour in testing an experiment which he had anticipated in the paper, but which did not turn out exactly as he wished. What he wanted to establish was that light falling upon or encountering a flat surface, after passing through three or four pieces of pasteboard placed some paces apart, would be fringed or uneven at the edges. 'Voilà les franges,' repeatedly exclaimed Brougham. 'Je n'en vois pas, Milord,' invariably replied the optician, who was himself a member of the Institut. To cut the matter short the friend gave his voice for the fringes, and all three started for the Institut in the remise.

Before they had gone far Brougham stopped the carriage, and, in spite of the optician's protest, who said they were already late, insisted on calling to see the Duc Decazes, who was too ill to see him. Their destination was reached at last, and, dragging his companion (who was not even a corresponding member) after him, he hurried into the centre of the assembled *savans*, and began introducing the illustrious obscure right and left to all of them.[2] This ceremony ended, the business of the day began by Brougham reading his paper which (barring accent) was not a bad or unsuccessful performance. No less a person than Arago remarked, in

[1] He had been elected an Associate by the French Academy of Moral and Political Science as far back as 1833.

[2] Brougham's habit of carrying an 'umbra' with him wherever he went must have been productive of considerable embarrassment. We find him now offering to plant Creevey on Lord and Lady Jersey, and anon inviting his friend Forsyth to come and dine at Panizzi's to meet Mr. Gladstone.

answer to a timid enquiry from the friend, 'C'est bien, très bien, mais il n'y a rien d'original là-dedans.' [1]

This is the general verdict upon Brougham's researches, whether in the realms of physics or of pure mathematics.[2] But one invention has given him a reputation which promises to be as permanent as the fame of Lord Sandwich or Lord Spencer. The 'odd little sort of garden-chair belonging to the Chancellor,' which piqued Moore's curiosity, was made to his order, in the days of his popularity, by Robinson, the coachmaker, and called after the illustrious designer. Possibly the brougham will be his most lasting monument. The Duke of Wellington, who one day told him so, was met with the retort that the conqueror of Waterloo had not disdained to identify his illustrious name with a pair of boots. 'Damn the boots,' replied the Duke; 'I'd forgotten them. You have the best of it.'

The evening of Brougham's day was brightened by the annual gatherings of the National Association for the Promotion of Social Science, of which institution he was the chief patron. These congresses were one long field-day for him. The committee held its first formal meeting at his house in July 1857. He was chosen president for the year, and delivered the inaugural address at Birmingham in October. The Association was, in truth, a revival of the 'March of Mind' movement, which received a fresh impetus from the Great Exhibition of 1851; and Brougham, who had taken all knowledge as his province, dispersed himself with avidity over the various sections. The latter end of the congresses was inglorious,[3] but they accomplished much useful spadework, and in their earlier days Brougham was still the shadow of a mighty name.

Each recurring autumn he loomed as sage and prophet before the eyes of a generation which was beginning to

[1] *Quarterly Review*, cxxvi. 57.

[2] But see Mignet, *Nouveaux Eloges Historiques*, 1877, 165.

[3] They died of inanition in 1884.

forget his vagaries. Nor was the ancient fire altogether extinct. At the York meeting a young gentleman came brusquely up to him and said, 'Lord Brougham, you are wanted in another section.' 'Good God!' was the reply, 'am I to be torn in pieces in this way?' and he hit the unlucky messenger a violent blow on the chest with his fist. The congress of 1858 met at Liverpool. Bowed with the weight of his fourscore years, he suddenly came upon the bust of Canning on the staircase of the town hall. What a flood of memories it must have conjured up—of the Premier stricken down in the hour of victory, of little Creevey, of Gascoyne in his top-boots, of Tarleton with the mutilated hand, and of that Harry Brougham who had traversed such strange and devious paths since the battle against the Orders in Council and the Liverpool election of 1812. It was a meeting with his dead self.

There were still unsounded depths of vitality in the old man. That same year he delivered an address on Isaac Newton at Grantham, a spot sufficiently near the birthplace of the philosopher to justify the townsfolk in honouring his memory with a statue. He had recently published, conjointly with E. J. Routh, the famous Cambridge coach, an 'Analytical View of Newton's Principia,' the work to which he and Lord Lyndhurst were equally attached. In 1859 he received the compliment of a D.C.L. degree from the University of Oxford at the Commemoration, and dons vied with undergraduates in their cheers. Four years later the wanderings of the Social Science Congress brought him to the city of his birth, and he was entertained at dinner, with a conviviality worthy of Christopher North, by the members of the Speculative Society.

These tributes were dear to one whose brilliant youth and manhood had undergone so dismal an eclipse; and in 1860 he was still more gratified by a special mark of royal favour. Childless as he was, he had been most anxious that the revived honours of De Brougham and

Vaux should be perpetuated in the family of his brother William. His wishes were carried out by the grant of a fresh patent containing a special remainder to William Brougham and his issue,[1] conferred, so the preamble said, as an

acknowledgment of the great services he had rendered, more especially in promoting the abolition of slavery and the emancipation of the negro race.

The death of Lord Lyndhurst in October 1863 was a blow from which he never quite recovered. For a quarter of a century they had lived together in affectionate intimacy; the admiration of each for the great qualities of the other was genuine and unbounded. Every afternoon Brougham would drive round to the house in George Street where his senior lay crippled with gout, and cheer him with gossip and *bavarderie*; and in the dark days after Lyndhurst's death, when his own mental powers were fast fading, he would still rouse himself to be driven there, and it was with pain and difficulty that the hopeless nature of his quest could be explained to him.

In 1863 he entered upon the composition of his autobiography. Had he begun ten years earlier it might have been a more valuable work, though the constitution of Brougham's mind must have denied it the authority which is generally conceded to those who speak as actors and eye-witnesses.[2] As it stands the arrangement is so faulty and confused, the want of method so conspicuous, that the transactions recorded in it can be followed only with difficulty, and the lacunæ are numerous and glaring. On the other hand, it contains a

[1] Had the title descended in priority of blood, the eldest son of another brother, John Brougham, was the rightful heir; see *Life of Lord Campbell*, ii. 245.

[2] As we have seen, Roebuck's *History of the Whig Administration* was inspired by Brougham when he was in full vigour; and even there the accuracy of the scenes in which the Chancellor took part is open to something graver than suspicion.

long correspondence with Lord Grey which is of distinct historical value, and a mass of other important letters, including many which passed between William IV. and his Chancellor.

Almost his last public appearance was at the memorable dinner given in the hall of the Middle Temple by the English Bench and Bar to M. Berryer in November 1864. The doyen of the law in France, who had been the friend of Erskine and of Copley, and who had defended Ney, 'a simple, sweet-looking old man,' was Brougham's guest in his house in Grafton Street. When it came to the latter's turn to speak his evil genius prompted him to declare that 'the first great duty of an advocate is to reckon *everything* subordinate to the interests of his client;' the words were an echo of a famous passage in his speech for the Queen.[1] The doctrine contained in them had failed to meet acceptance with either moralists or lawyers, and they had been the text for many a homily against the gentlemen of the long robe. Sir Alexander Cockburn, Chief Justice of the Queen's Bench, saw his opportunity for repudiating them, and, amidst the plaudits of the assembly, he insisted

> that the arms which an advocate wields he ought to use as a warrior not as an assassin. He ought to uphold the interests of his clients *per fas* but not *per nefas*. He ought to know how to reconcile the interests of his clients with the eternal interests of truth and justice.

Brougham himself, according to Sir George Rose, thought that Cockburn 'made rather a mess of it!'

> Palmer was quite equal to the occasion, wrote J. D. Coleridge,[2] and that is saying a great deal; so was Gladstone, whose speech, of the English ones, was certainly the best; so was Cockburn, though he made capital as usual for himself out of a slip of poor old Brougham's, whom he might have spared.

'Poor old Brougham'! That was the light in which the budding Solicitor-General regarded the man who

[1] *Vide supra*, 239.

[2] *Life of Lord Coleridge*, ii. 130.

rescued a Queen of England from the very jaws of destruction, who struck the fetters from the slave, who carried the Reform Bill in the teeth of King and Peers. He had indeed lived too long, he had lagged superfluous on the stage, a living monument of the vanity of human wishes, of the instability of human fame.

In the winter of 1865 his wife died at Brighton; for many years past she had been unable to accompany him to the South of France, and the doctors forbade his undertaking the journey across the Channel to her funeral.[1] In October 1866 he attended the Manchester meeting of the Social Science Association, and in the same year he put forth what he termed his legacy to his countrymen, a letter denouncing the electoral corruption which was undermining and rendering ineffectual the great gift of Parliamentary Reform. In the course of 1867 his mental powers flickered out. One November morning a friend called at his London house where he was stopping on his way from Westmorland to Cannes.

> The servant opened the door of the dining-room, and I saw Lord Brougham sitting in an arm-chair near the fire. His hair was white as snow, and so were his shaggy eyebrows. I did not like to advance, for I was painfully conscious that he no longer knew me.[2]

He died painlessly in his sleep at the Château Eleanor Louise on May 7, 1868, and was buried in the cemetery at Cannes. When the story of his fatal carriage accident startled London, Sheil very happily quoted of him

> The extravagant and erring spirit hies
> To his confine.

And now the lines rose again unbidden to the lips of those who could remember Harry Brougham in his prime. To the thousand contradictions of the strangest and

[1] He dedicated to her the collection of his speeches published in 1838.

[2] *Lord Brougham's Letters to Mr. Forsyth*, 19.

most versatile figure in our annals it would require a Clarendon to render justice—a Clarendon or a Dryden. Indeed, the latter, by anticipation, has half accomplished the task, and the description of Zimri, too hackneyed to bear quotation, may be applied almost word by word to Brougham. But, even with the addition of some of the couplets appropriated to Achitophel, the picture is incomplete. It exaggerates the vices and the foibles; there is no hint of the great and noble qualities of the man concerning whom it has been finely said that of every human right he was a champion, of every wrong an avenger.

Brougham's physiognomy was almost as marked as his mental characteristics. The tall disjointed frame with the strong bony limbs,[1] the never-to-be-forgotten nose, were not inconsistent with that dignity which the sensation of force rarely fails to confer.

> There is a glare in some men's eyes which seems to say, 'Beware, I am dangerous; *noli me tangere.*' Lord Brougham's face has this. A mischievous excitability is the most obvious expression of it. If he were a horse nobody would buy him; with that eye nobody could answer for his temper.[2]

Such a face and form were the joy of the caricaturists; he is the prime favourite in 'H. B.'s' stock company, and when the elder Doyle laid down the pencil the whole staff of 'Punch' settled upon him. No one ever made such splendid sport for the Philistines. And to this day, little though the general reader may know it, Brougham's most prominent feature catches his eye on the cover of the 'London Charivari' every week. For some forgotten cause Brougham had given bitter umbrage to the designer,

> [1] A meagre form, a face so wondrous thin
> That it resembles Milton's Death and Sin,
> Long arms that saw the air like windmill's sails,
> And tongue whose force and fury never fails.

[2] Bagehot, *Biographical Sketches*, 64.

who vowed to 'drag his face through the mire.'[1] A glance will show that, amid the troop of imps and elves who dance round the border of the frontispiece, one trails by a string a mask with upturned face from which is visible and distinct the proboscis which once adorned the countenance of Lord Brougham.

[1] *History of Punch* (p. 202), by Mr. M. H. Spielmann, to whom I am indebted for a complete list of the references to Brougham scattered up and down the volumes of that journal.

CHAPTER XVII

LIFE OF LORD COTTENHAM DOWN TO HIS APPOINTMENT AS CHANCELLOR

1781–1836

CHARLES CHRISTOPHER PEPYS, the second son of Sir William Weller Pepys, Baronet and Master in Chancery, was born in Wimpole Street on April 29, 1781. Like the great Samuel, he was 'descended of ye antient family of Pepys of Cottenham in Cambridgeshire.' Their latest common ancestor was a certain John Pepys who died in 1589, and was the great-grandfather of the diarist.[1] A grandson of this John, Richard by name, became 'Lord Chief Justice for holding Pleas in the Upper Bench in Ireland,' under the Commonwealth, and from him descended the parent of the future Chancellor. William Weller, born in 1740 and created a Baronet in 1801, was the eldest son of William Pepys, a banker in comfortable circumstances. Losing his father when an infant, he was educated at Eton and Christ Church, forsook the family counting-house for the Bar, went the Oxford Circuit, and was made a Master in Chancery in 1775, a post which he retained until 1808; he died in 1825.

Less celebrated than his brother Sir Lucas, physician to George III. during his mental derangement, 'Master' Pepys occupied in his day a not inconsiderable niche in literary society. The friend and correspondent of Mrs. Chapone, of Mrs. Montagu, of Fanny Burney, of Mrs.

[1] The Cottenham family retain the dissyllabic pronunciation Pep-ys. The Samuel Pepys Club insist on 'Peeps' for their eponymous hero. Neither 'Peps' nor still less 'Pips' is tolerated by the *cognoscenti*.

Thrale, and of Hannah More, he was a prop and mainstay of the 'Blue-stocking Assemblies,' which strove to reform society by the substitution of conversation for the card-table. These gatherings have been the subject of much exaggerated ridicule; and a generation groaning under the tyranny of Bridge may look sympathetically back to the quiet evenings over lemonade and biscuits which drew together the best intellectual company and some of the most agreeable women in London. The members of the fraternity, or rather of the sorority, met not unfrequently in Pepys's house in Wimpole Street, and on such occasions the courteous little gentleman was in his element. By the somewhat partial testimony of Sir Nathaniel Wraxall, 'he united great colloquial powers to a mind adorned with classic images and conversant with classic authors.' He figured as Lælius in Hannah More's forgotten poem the 'Bas Bleu,' and it was his misfortune more than once to bring down upon his devoted head the sledge-hammer blows of Samuel Johnson. But though worsted in the combat he was known to withstand the Lexicographer to the face with that quiet obstinacy which was to assume a more pronounced shape in the disposition of his son Charles. He earned the Doctor's respect by the warmth with which he championed his deceased friend Lord Lyttelton, and the former was heard to declare, 'I knew the dog was a scholar, but that he had so much taste and so much knowledge I did not believe.'[1] He moved with credit and applause among the wits and celebrities who compose the background of Boswell's canvas.[2]

[1] There were times, however, when he was driven into retreat by the ungovernable rudeness of his adversary. 'Poor Mr. Pepys,' writes Fanny Burney, 'joined Dr. Johnson, with whom he entered into an argument upon some lines of Gray, and upon Pope's definition of wit, in which he was so roughly confuted and so severely ridiculed, that he was hurt and piqued beyond all power of disguise, and in the midst of the discourse, suddenly turned from him, and wishing Mrs. Thrale good-night, very abruptly withdrew.'

[2] See *A Later Pepys*, by Miss Alice C. C. Gaussen.

In 1777 William Pepys married Elizabeth, the eldest daughter of the Right Honourable William Dowdeswell, an ardent Whig politician and Chancellor of the Exchequer in the first Rockingham Administration. Of his three sons the eldest, William, inherited his father's scholarly and cultivated tastes, but though he is said to have possessed considerable businesslike aptitude, he never adopted a profession nor took any part in public life. Henry, the youngest, rose to high office in the Church, and filled the See of Worcester for nearly twenty years. To the second son, Charles, after a youth and early manhood which gave little promise of eminence, came the Woolsack and the Seals.

The boys owed much to their father, a man of cheerful disposition, high integrity, and, as became the friend of Hannah More, of unswerving religious principles. So far as time and Chancery would permit, he himself grounded them in the classics.

You enquire after Charles' Greek, he wrote to his eldest son when the former was twelve years old. We are still in the Alphabet, and I fear shall long remain so, unless *you* can give Us an helping hand when you come to town, for my Time is (as you know) so very much engrossed by Office Business and the *Latin* of the Boys, that unless Charles can learn to *read* It, as you did, by the Letters cut out, and the Alphabet in the Grammar, I know not when, or how, I can teach it him.[1]

In due course the grammar was vanquished and Charles proceeded to Harrow, then enjoying no small share of prosperity and popularity under Joseph Drury. He is described as a stout, sturdy, thick-set boy, of blunt speech and cold disposition, aiming at no distinction, making few friends, and exhibiting no traces of the discipline to which paternal care had subjected him.[2] He was one of a type peculiar to our public schools,

[1] *A Later Pepys*, ii. 190.
[2] Le Marchant's *Life of Earl Spencer*, 59.

which goes respectably through its course, doing just the requisite minimum, and no more, but exercising what is conventionally termed a 'good influence' and acting as ballast to the ship. When it is added that he was a member of a set comprising Herman Merivale the elder, Henry Drury of the *Arundines Cami*, Denman, and Lancelot Shadwell, we can see that socially he got the full advantages of Harrow. He was a contemporary of the brilliant Lord Royston, doomed to an early death, while three of his schoolfellows, Lord Duncannon, Lord Althorp, and the Hon. Frederick Robinson,[1] were destined to be his Ministerial colleagues.

With Lord Althorp he was on terms of close friendship, and the only existing anecdote of his school days is preserved in Sir Denis Le Marchant's Life of that statesman:

> At the beginning of winter, before the ice was considered fit for skating, most of the boys collected on the margin of a pond, discussing whether it would be safe to venture upon it. Lord Althorp suddenly called out that if any boy would take his hand he was ready to make the experiment. No sooner had he spoken than Charles Pepys, although the heaviest boy in the school, rushed forward, and without saying a word, took his hand. They at once started, and soon found the undertaking to be attended with some peril, the ice bending and cracking under them as they proceeded, and it was to the surprise and exultation of the bystanders that they reached the opposite bank in safety.[2]

In June 1798 he figured on the Harrow speech day, taking the part of 'Buckingham' before the fond eyes of his parents. He seems to have passed all the school 'trials' with credit, and at his own particular request was indulged by his father with three years at Trinity, Cambridge. During his whole time at Harrow he had never caused a moment's anxiety at home, and Sir

[1] 'Prosperity Robinson,' created successively Viscount Goderich and Earl of Ripon.

[2] *Life of Earl Spencer*, 60.

William's correspondence abounds with thankfulness for the good conduct of all his sons :

> Charles, he wrote, seems to be developing very fast those good Qualities, which, I never doubted, would by Time and Opportunity expand themselves, and I have received some Letters from him lately, particularly on the subject of a charitable scheme, which he has prepared, that do him the highest credit.[1]

In after life Charles Pepys was destined to be brought professionally into connection with a good many 'charitable schemes.'

At Trinity he made even less mark than at Harrow ; leaving the Tripos severely alone, he graduated LL.B. in 1803. Sir William always considered that he had injured his own health by 'a too meritorious application' to study when an undergraduate, and he was prompt to check any such tendency in his offspring.

> Pray let me entreat you, he wrote to his eldest son,[2] not to trouble your head about being a senior wrangler or any such unimportant stuff ; who knows or who cares whether a man in any profession was a wrangler when at Cambridge ?

Nurtured on such precepts, it is not to be wondered at if Charles Pepys pursued the even tenour of his way, untroubled by thoughts of examiners or fellowships. But it is strange that, though a fair classical scholar, and gifted with the power of expressing himself at need, as his judgments show, in terse and forcible English, he should have shown to the public eye, at any rate, so little love for literature. It is not improbable that he suffered from the too severely intellectual atmosphere of his home, and that the frequent presence of 'good Mrs. Chapone' and others of the Bas Bleus at the paternal board may have given him a permanent distaste both for improving conversation and for what were called, we may be sure, in his domestic circle *les belles lettres*. Few men who attained

[1] *A Later Pepys*, ii. 203. [2] *Ibid.* 210.

to high judicial eminence have apparently paid less attention to Lyndhurst's maxim that 'a judge ought to look ahead and cultivate literature and science, for the lights they so acquire reflect back on the Bench and afford force and vigour to the judgment they pronounce.' But in this respect, as in many others, his habits of extreme reserve have done him an injustice. And one pleasure of a refined character remained with him to the end of his days. Foreign travel was a never ceasing enjoyment; his vacations were largely spent in Italy, in France, and in Germany. He was a good French scholar, and the diaries which he kept during these expeditions show that his rambles were a source of intellectual pleasure as well as of bodily recreation.

From a very early age he was self-dedicated at the altar of British Themis, for in January 1801, when still an undergraduate and only in his twentieth year, he had entered his name at Lincoln's Inn, a much less usual proceeding for those *in statu pupillari* than it is to-day. Though destined for the Chancery Bar, at which his father's position was bound to prove of essential service, he began his legal studies, as soon as he had taken his degree, by a course of special pleading, in Mr. Tidd's chambers, where Campbell was among his fellow-pupils.

The great ornament of our Bar, writes the latter to his father,[1] is a Mr. Pepys, a nephew of Sir Lucas. The question for last Saturday morning: 'A leases to B; B assigns to C; C makes a new covenant with A for the payment of the rent and assigns to D; D becomes bankrupt, his assignees enter, the rent becomes in arrear. A sues C upon the covenant, and recovers. *Q.* Can C maintain an action againt the assignees for the money he has thus been compelled to pay?' I can assure you this was agitated with as much keenness as if it had been some interesting point in literature or politics.

Pepys had at last touched congenial soil. With him law was not merely the main, but an all-absorbing,

[1] *Life of Lord Campbell*, i. 138, and *vide supra*, 10, for Tidd's debating society.

interest in life until politics embraced him in their vortex. Knotty points in conveyancing, complicated questions of account, the doctrine of the *scintilla juris*, were to him—

> Not harsh and crabbed, as dull fools suppose,
> But musical as is Apollo's lute.

He was one of those thrice happy mortals who, by good fortune or by self-knowledge, are guided to the one calling for which they are adapted by nature, and, secure in their arid fastnesses, cast no lingering looks behind to the green pastures of books, or art, or social pleasure.

Having taken time by the forelock, Pepys was called on November 23, 1804, and, taking chambers in 16 Old Square, Lincoln's Inn, he began the study of Equity under the guidance and direction of Sir Samuel Romilly. It was a stroke of fortune and a great privilege to enter upon his profession so well and worthily recommended, and it was probably in Romilly's chambers that he obtained access to those MS. notes of Lord Hardwicke's judgments to which he was wont to refer in after years.[1]

His progress at the Bar is said to have been slow, but the son of a Master in Chancery, before whom solicitors trembled daily, was not likely to stand long in want of briefs, and in those days not only was the Chancery Bar a small and select borough, but the old-fashioned Chancery suit was at its prime, and the simplest matter could not be disposed of without some twenty wigged heads bobbing up in court, representing for the most part some reluctant litigant who had been involved in the vortex under the rules of Court, without the faintest conception as to why or wherefore. Within five years of Charles's call Sir William Pepys could write to Hannah More : 'The success of my second son at the Chancery Bar has been most rapid, and highly gratifying to me.'[2]

His early days at Lincoln's Inn were coincident with

[1] Hansard, xxxiii. 405.

[2] *A Later Pepys*, ii. 295.

that vast growth in Chancery business which led to the appointment of the Vice-Chancellor of England in 1813, and it is about this time that the line between the barristers who practised on the two sides of Westminster Hall became a hard and fast one. Up to the end of the eighteenth century it had been the custom for all members of the Bar to attach themselves to a circuit and attend assizes and sessions with more or less assiduity; John Scott, the future Lord Eldon, was in his early days one of the lights on the Northern—and Romilly had enjoyed a good practice on the Midland. In the next generation the custom had become extinct, and neither Pepys, nor Bickersteth, nor Sugden, nor Pemberton ever tried his fortune out of London; Wetherell, I am inclined to think, was the last Chancery circuiteer of eminence. The want of acquaintance with Common Law procedure, and especially with the oral examination and cross-examination of witnesses, was a loss both to the men themselves and to the formation of the judicial mind. The absence also of the camaraderie and the discipline of the Circuit mess, unrefined as a good deal of the humour may have been, left its mark on the home-keeping youths of Lincoln's Inn. The perfunctory dinners in hall were an indifferent substitute for the rough good-fellowship and tolerance which made the tradition of the Common Law Bar. In the case of Pepys especially the sociable journey from town to town in post-chaises, the intimacy bred in Circuit lodgings, the Gargantuan merriment of Grand Night might have gone some way towards correcting a reserved and phlegmatic disposition.

His career at the Bar, so far as I can ascertain, has not left a single trace in legal anecdote or legend. His footsteps are only to be followed in the pages of the Law Reports, and his learned arguments are exclusively concerned with nice points of law. Once only does a gleam of light fall from the outside. Writing to one of his lady correspondents in 1816, Sir William Pepys[1] men-

[1] *A Later Pepys*, ii. 330.

tions that an unsuccessful claim by a Mrs. Garrick [1] to a part of the residue of her husband's property had afforded his son Charles an opportunity of distinguishing himself very much by a speech which he had made on her side. But this is not the sort of straw that goes to the making of bricks. Lord Campbell once told a friend of mine that he sincerely pitied anyone who attempted to write the Life of Lord Cottenham. 'Incident, child, incident is what a biographer wants,' said Dr. Johnson to Hannah More, apropos of the poet Akenside. 'Did he break his leg?' Not even that can be said of Mr. Pepys, and we must content ourselves with his father's somewhat exaggerated assurance that his success was so rapid and so uncommon as to exceed his most sanguine anticipations.

On June 30, 1821, he was married to Caroline Elizabeth, the second daughter of William Wingfield, K.C., Chief Justice of the Brecon Circuit, who afterwards became, like most people connected with the Pepys family, a Master in Chancery. The future Lady Cottenham was described by her father-in-law elect as

> a most amiable young lady, who promises to be a great acquisition to our fireside, and for whom I have already conceived a great affection, which her animated and pleasing manners will I doubt not increase.

The union, which was an exceedingly happy one, was blessed with fifteen children. The glimpse of family life given by Miss Gaussen shows a side of his character unsuspected in Lincoln's Inn or at Westminster:

> His return was the hour of peace and joy, in which the little ones shared, when he went up to the nursery to sing them what he called Chinese songs. . . . a friend of his remarking on the serene brilliancy of his wife, said 'Such a sunbeam is worth ten thousand a year.' 'Ah,' replied he, 'what would ten thousand a year be without it?' [2]

One cannot but regret that a man whose life was so pure and blameless should have been led by shyness

[1] Not the widow of the famous David. [2] *A Later Pepys*, ii. 55 *n.*

and habits of intense self-absorption to make few friends outside his own immediate circle.

Pepys received a silk gown from Lord Lyndhurst on August 24, 1826, and was elected a Bencher of Lincoln's Inn in the November following. He rapidly acquired a reputation as one of the soundest and most reliable leaders in Chancery :

> His powers as an advocate were not brilliant, but his statements were clear, and his reasoning cogent. His discretion too was great, and his temper at all times perfect. There could be no comparison between the effect produced upon the Court by his advocacy and that of declaimers of earnestness more vehement and of a subtlety more dazzling. For he had quite as much energy as any occasion required, and he never forgot that he was addressing a single judge, and that judge a professional man.[1]

He was considered moreover to be comparatively free from those habits of prolixity and repetition which were maliciously imputed to the Equity Bar.

His next advancement took place in November 1830, within a few days of the accession of the Whigs to office, when he was made Solicitor-General to Queen Adelaide, a promotion in which it is not difficult to recognise the handiwork of his schoolfellow and friend, Lord Althorp. The actual appointment rested with the Chancellor, and Campbell seems to have had a prophetic eye to a future rival, for he wrote that Brougham in disposing of the Solicitor-Generalship to the Queen will act without regard to the opinion of the profession. 'He likes to show his power by doing what other men would be afraid to do.'[2] In the following year Pepys entered Parliament, being returned in July 1831, for Higham Ferrers a seat which he exchanged a few months later for Lord Fitzwilliam's borough of Malton. Master Pepys's official station had precluded him from playing any active part in politics, and his son had never, till this moment, shown any

[1] *Law Review*, xiv. 354.

[2] *Life of Lord Campbell*, i. 493.

inclination to allow them to interfere with the path he had marked out for himself at the Bar. But of the depth and sincerity of his Whiggism, inherited, if we must look so far back, from his grandfather Dowdeswell, there was never the smallest question. And in the patronage thus extended to him by the most powerful of the Yorkshire Whigs we trace again the guiding hand of Lord Althorp.

Beyond voting steadily in the Ministerial lobby, the member for Malton brought no visible accession of strength to his party. He spoke in committee on the Bankruptcy Bill shortly after taking his seat,[1] but he took little or no share in the general business of the House. In the debate on the Dutch loan,[2] when the Government was hard pressed and the Tory lawyers were riding roughshod, some active support might not unfairly have been expected from him, and a recent argument in the Courts had shown that he was well versed in questions of international law.[3] He contented himself, however, with remarking to Mr. Le Marchant : ' The Ministers make their men feel the collar too much.' [4] Whoever felt the collar, it was not Pepys ; he allowed nothing to stand in the way of his practice ; his constituents ranked far below his clients. The bustle of the House of Commons was distasteful to him ; his attendance became irregular, and no man seemed more absolutely free from political ambitions or prospects. Moreover, he had ceased to be Solicitor-General to the Queen. In the crisis of May 1832 he had thought it incumbent to follow the Ministry in their temporary resignation, and after the interregnum Adelaide refused to reappoint her law officers on the ground of their parliamentary position making them political personages.

But an astonishing change was at hand, and it is curious that one whose whole conduct was marked by

[1] Hansard, 3rd ser. viii. 729. [2] January 27, 1832.
[3] King of Spain *v.* Hullett and Widder ; 1 Clark and Finnelly, 333.
[4] *Life of Lord Spencer*, 391.

absolute independence and a rugged straightforwardness of disposition should have risen to office in the wake of a succession of tortuous intrigues. For three years his career was the sport of ambitious and designing men, with results equally surprising to himself and to those who pulled the wires. Ever since the formation of Lord Grey's Administration the Whigs had suffered heavily from the paucity of distinguished lawyers in their ranks. The elevation of Sir Thomas Denman to the Chief Justiceship in November 1832 made another gap, and the appointment of Sir William Horne as Attorney-General rendered their feebleness even more conspicuous. Sir John Campbell, who succeeded him as Solicitor-General, and was a most useful fighting man in the Commons, would have liked to become the senior law officer *per saltum*. The difficulties, however, proved insurmountable, and he was assured that Horne should be made a judge at the earliest opportunity, and that, in the meanwhile, the Solicitor-General should conduct all Government prosecutions, and be consulted separately when necessary.[1]

During the following Session, Horne's incapacity became more and more apparent. A fair Chancery leader and a high-minded man, he was inefficient in debate, irregular in his attendance at the House, and indolent in official business. Lord Althorp and Lord John Russell are said to have come to a joint determination that he must be got rid of, and, unless rumour was strangely uncharitable, Campbell was not remiss in drawing attention to the shortcomings of his colleague. In the autumn of 1833 old Baron Bayley intimated a desire to resign, and Brougham saw his way to a long-meditated project, the appointment of an Equity lawyer to the Exchequer, who, by arrangement with the other Barons, should devote himself exclusively to the Equity work which was still attached to that Court, and thus give some real relief to the overburdened Chancellor.

[1] *Life of Lord Campbell*, ii. 19, 28.

Conscious of his humiliating position as a practically shelved law officer, Horne was willing to accept the post on condition that he was relieved from going Circuit. He had no Nisi Prius experience, and he is said to have had conscientious objections to pronouncing the death penalty, a ceremony which in those hard days formed so considerable a portion of the judge's duties. Brougham assured him that this should be arranged for, but with his usual want of discretion managed to offend the susceptibilities of the Barons of the Exchequer, who would not hear of one of their number being withdrawn from his ordinary duties.[1] There were technical difficulties which seemed to require an Act of Parliament, and finally the Chancellor told Horne that he must accept the judgeship on the ordinary footing. Horne indignantly refused, only to find that he was regarded as having resigned, and that no alternative remained but to do so in reality. He retired with dignity from a scene where, by common consent, he had been abominably used. He resumed private practice, and a few years later was made a Master in Chancery by Lord Cottenham. He died at an advanced age in 1860. The onus of his downfall has been generally laid upon the shoulders of Sir John Campbell ; the real cause was Brougham's mismanagement and his incurable habit of making promises without any certainty of being able to fulfil them.

Campbell succeeded Horne, and the question of the new Solicitor-General arose. The Whigs are somewhat unkindly described as absolutely 'suffering the last straits of famine for want of legal talent,' and the choice of Pepys was received with more surprise than enthusiasm. His reputation did not extend beyond that of being a laborious and well-informed practitioner in Chancery.

Sir Charles Pepys, who had been knighted on February 26, 1834, held the post for less than six months. His position at first was embarrassing, for the Attorney-General had lost his seat for Dudley and did not re-enter the House

[1] *Life of Lord Langdale*, i. 389, 391.

till May. The whole conduct of the legal business in Parliament devolved upon the Solicitor-General, but he seems to have treated it lightly enough, and his name recurs with little frequency in the pages of Hansard. He took charge of the Bill for the establishment of the Central Criminal Court, spoke on behalf of the new Poor Law Bill, intervened in one of the numerous debates caused by the refusal of the Benchers of the Middle Temple to call Mr. Whittle Harvey to the Bar, and supported unsuccessfully the opposition to the incorporation of the London and Westminster Bank, which was supposed to be inimical to the privileges of the Bank of England.[1] His main performance, which raised him considerably in the estimation of the House and of his colleagues, was a very clear and incisive speech made in moving for a select committee to enquire into the law of libel.[2] Campbell, however, declares that he was coached and crammed for the occasion by Brougham, after having professed his entire ignorance of the A B C of the subject in a consultation held at the Chancellor's house.[3]

In September of the same year the Master of the Rolls, Sir John Leach, died unexpectedly at Edinburgh. A man of great quickness of perception, considerable legal acquirements, and a good judicial instinct, his usefulness had been marred by grave faults of temper and an ambition which was bounded by few scruples. He had never recovered from the discredit of the Milan Commission and the Bill of Pains and Penalties. Though the Attorney-General for the time being had no prescriptive claim to the Rolls, it was generally understood to be at his disposal if he chose to ask for it, and Sir John Campbell lost no time in urging his claims upon Lord Melbourne. Brougham, however, had other designs. Campbell had given him offence in various ways, and he insisted that, in the public interests, 'A common lawyer both on the Woolsack and at the Rolls was wholly out of the question.'

[1] Hansard, xxiii. 879, 933, 1310, 1342. [2] *Ibid.*, xxii. 410.
[3] Campbell, *Life of Brougham*, 420.

Moreover, he had made up his mind in favour of Pepys, who had favourably impressed him in Court, and whom he considered as being, next to Sugden, by far the best man at the Chancery Bar. Before the end of the month Pepys had been appointed and sworn in. Campbell was intensely mortified, but could not resist the argument grounded on public policy. He contented himself with acidly reminding Brougham that he had

> made rather greater exertions and sacrifices in the Liberal cause than his Honour Sir Charles Christopher, for whom, be it understood, I have a sincere regard, and, indeed, I have never known in the profession a more honourable or respectable individual.[1]

Sir Charles Christopher was, indeed, the spoiled child of fortune, if we are to regard political service as the only claim to judicial office; and his luck was emphasised when, a few weeks later, the Whig Administration was dismissed by the King. If Leach had lived till the end of November the patronage would have fallen into the hands of the Tories, and Pepys might have whistled loud and long for such another conjunction of events. Meanwhile he was not slow in vindicating his appointment. Whatever his failings as a politician might have been, there could be no question of his merits as a judge. And Brougham, in bidding farewell to the Bar, paid a somewhat exaggerated compliment to the high attainments of Pepys as a lawyer, and to his consummate fitness for the judicial office, by declaring that the elevation of the Master of the Rolls was his own best title to the gratitude of the profession.[2]

But Pepys was only on the threshold of still higher preferment. The embarrassments of the Whigs on their return to office in April 1835 placed him, as we have seen, in the dignified position of Lord Commissioner of the Great Seal together with Vice-Chancellor Shadwell and Mr. Justice Bosanquet. The expedient served the

[1] *Life of Lord Brougham*, iii. 430. [2] Mylne and Keen, iii. 724.

personal exigencies of the moment, and was acceptable to Melbourne, who was engaged in elaborating a project for reforming the office of Lord Chancellor out of existence. But it deranged the whole business of the Equity Courts, and caused the maximum of inconvenience to the suitors. The arrangement by which both the Equity judges were withdrawn from their Courts at the same time and made to sit in appeal on each other's decisions was open to censure from every conceivable point of view.

From this perpetual seesaw a mode of escape had to be contrived at all hazards. Lord Melbourne's hand was forced, and the appointment of a Chancellor was determined upon. The Premier himself would have preferred Bickersteth, whose aid he had invoked in preparing his scheme for reforming the Chancery Courts, and whose polished manners and suave demeanour were in striking contrast to the somewhat ungenial and self-centred Pepys. One or two members of the Cabinet shared the predilections of their chief. But though Althorp had gone, there was still a strong and somewhat mysterious influence that drew Pepys upwards. The existence of rival claims of a formidable nature rendered speed and secrecy essential, and on January 17, 1836, the public learned that 'a plain, undistinguished man, to whom expectation never pointed,' had been made Lord Chancellor of England. He occupied the seat on the Woolsack for the first time on February 4, taking his title from the ancestral manor of Cottenham, in Cambridgeshire, known to successive generations of Cantabs as the home of a peculiarly excellent 'soft' cheese.

LORD COTTENHAM

After a lithograph by R. J. Stothard

CHAPTER XVIII

LORD COTTENHAM'S TWO CHANCELLORSHIPS AND DEATH

1836–1851

LORD Cottenham's first official act was the introduction of a Bill for dividing and distributing the duties performed by the Lord Chancellor. The Prime Minister had long been convinced that the accumulation of political and ministerial functions which had gradually arisen round that officer was the root of the abuses which had rendered the Court of Chancery a reproach and a hissing. In this view he was confirmed by a masterly memorandum which Bickersteth, one of the ablest exponents of Benthamism, had recently prepared for him. The heads of the measure of reform were decided upon and a couple of Bills were drafted to carry them into effect. But Cottenham's masterful spirit had already begun to assert itself, and the scheme which he laid before the House of Peers on April 28, 1836, was not that of Bickersteth, but one which he had prepared on lines of his own.[1]

The Government Bills left the procedure and the jurisdiction of the Court of Chancery untouched, save that the Equity business of the Court of Exchequer was transferred to it; but they placed at the head of it a permanent judge with the title of Lord Chief Justice of the Court of Chancery, whose attention was to be exclusively devoted to his judicial duties, and who was to be invested with a special Court of Chancery Seal. The office and style of Lord Chancellor were to be retained,

[1] For Cottenham's draft, see *Life of Lord Langdale*, ii. 252; Hansard, xxxiii. 402.

and the holder was to be removable on a change of administration; he was to keep the Great Seal, to exercise the patronage attached to it, to act as Speaker of the House of Lords, and to preside over the hearing of appeals there and in the Privy Council, but he was to possess no authority over the working of the Court of Chancery, and no *locus sedendi* in that tribunal.[1]

The burden of the Chancellor's speech was a plain unadorned statement of the arrears in Chancery which 'the almost miraculous exertions' of Brougham had failed substantially to abate, and of the absolute necessity for relieving the office of some of its multifarious duties. But Cottenham, accustomed to addressing a single judge on matters with which his tribunal was, in theory at any rate, fully cognisant, had not the faculty of suiting his style of oratory to his audience. 'Tame, confused, and dissuasive,' was the verdict.[2] The proposals were coldly received, and a severe blow was administered by Bickersteth (now Lord Langdale, and the Chancellor's successor as Master of the Rolls), who intimated strong disapproval of some of their main principles.

Out of doors the criticism took a more decided shape. The Opposition, knowing little and caring little for the high judicial excellence of Lord Cottenham, fixed upon his political obscurity and his obvious want of facility and address in the face of a deliberative assembly. A parallel may be found in the uproarious mirth with which the late Sir John Rigby's intervention in debate was at one time greeted by the young bloods of the Unionist party. And Disraeli, in a Runnymede letter, declared that—

the gay liver who, terrified by the consequences of his excesses, takes to water and a temperance society, is in about the

[1] The Bill also contained provisions for the permanent sitting of the House of Lords as a Court of Appeal, and for summoning the Equity judges to advise it, in the same way as the judges of the Courts of Common Law.

[2] *Life of Lord Campbell*, ii. 82.

same condition as the Whig Ministers in their appointment of a Lord Chancellor, when, still smarting under the eccentric vagaries of a Brougham, they sought refuge in the calm reaction of your sober Lordship. This change from Master Shallow to Master Silence was for a moment amusing; but your Lordship has at length found the faculty of speech, and your astonished countrymen begin to suspect that they may not be altogether the gainers in this great transition from Humbug to Humdrum.

The second reading was fixed for June 13.[1] Cottenham, discouraged by his previous reception, was even less effective than before, and Langdale now gave full vent to his dissatisfaction. The Government plan suffered in his eyes from the cardinal mischief of failing to separate entirely the judicial and ministerial functions of the Chancellor. He proposed that that official, while deprived of the Great Seal, should retain his title and be restricted to the judicial business of his own Court; that the political functions of the Chancellor should be discharged by a Keeper of the Great Seal, who was to hold no judicial office, but was to act as a minister of law and justice; and that the appellate efficiency of the House of Lords should be secured by the presence of a permanent judge with the title of 'Lord President in matters of appeal and writs of error.'

This tripartite division of the Chancellorship won small favour, but Langdale's admirable powers of exposition were in marked contrast with Cottenham's halting efforts, and his damaging analysis of the Government scheme was not softened by the announcement that he intended to vote for the second reading. 'By a curious felicity of fortune it had succeeded in arraying against it the superficial prejudices of all parties.'[2] Lyndhurst fiercely contended that the Chancellor under the new dispensation would be a lawyer without a court, and that a lawyer without a court would soon be a lawyer without law. The Bill was thrown out by ninety-four

[1] Hansard, xxxiv. 413.

[2] *Letters of Runnymede*, 157.

votes to twenty-nine, and with it disappeared whatever ambition Lord Cottenham entertained of introducing radical changes into a system with the working of which he was, in the main, not dissatisfied. His want of success with the Peers increased his reluctance to join in their debates, and he became of small assistance to his party in their uphill struggles against Lyndhurst and Brougham.

The incident had another unfortunate consequence. Lord Langdale's opposition was a cause of deep mortification to the Chancellor, whose temperament was not one which brooked opposition ; he was by nature most tenacious both of his opinions and of his dignity, and he never forgave anything like an interference with his authority. He could not be unaware that a section of the party would have preferred Lord Langdale on the Woolsack, and for some years to come—in fact, during the whole of his first Chancellorship—his relations with the Master of the Rolls were decidedly strained. This disagreement between the two chief judges in Equity was fatal to frank intercommunication and proved a serious obstacle to the cause of law reform.

But whatever disappointment Lord Cottenham may have caused by his parliamentary failure was atoned for by his surpassing excellence as a judge. Of the precise nature of this excellence it is difficult to convey an adequate idea to the non-professional reader ; it was based partly upon the natural qualities of his mind, partly upon the training of his laborious noviciate. Wide experience in the Equity courts had made him familiar with every bound and turn of the advocate, with every nicety in procedure. His stolid temperament and innate discretion preserved him from all temptation to undue haste, while his rapid perception and intimate acquaintance with pleading and practice forbade any effort at tampering with the time of the Court. An enlarged common sense was, perhaps, the most distinguishing feature of his judgments. There was nothing technical about them though they never departed from the arti-

fices of the system which he was called on to administer; they were clear as crystal, but they were none the less an application of the bedrock principles of our equitable jurisdiction.

When he indulged in disquisitions, says Sir Denis Le Marchant,[1] and some of his judgments abound in them, it was always for the purpose of elucidating his view of the case before him, not of starting incidental or extraneous questions. Hence his judgments were at once business-like and philosophical; sound determinations of the particular rights at issue, and at the same time treasures of legal knowledge and instruction to the general practitioner and the student. The style of them, like the character of the man, was perfectly free from all affectation and display; whether written or spoken they were always simple, terse and perspicuous; clear and condensed in their summary of facts, and in their exposition of law comprehensive and vigorous, but at the same time cautious and precise. In those which he pronounced extempore his delivery was too rapid to admit of much attention either to the choice of words or to the structure of his sentences; but his written judgments, though aspiring to none of the graces of composition, possessed all the highest attributes of the judicial style, not the least of which was a very sparing use of figurative or metaphorical language which, in subjects requiring logical precision, is so fertile a source of fallacy and misconception.[2]

Without any pretensions to deep learning he was a first-rate lawyer, though Campbell[3] describes him in 1846 as being not at all familiar with the Roman Civil Law, and profoundly ignorant of the codes of all foreign nations. 'Even of Equity he knows little before the time of Lord

[1] *Life of Lord Spencer*, 64.

[2] It is remarkable how few of the cases that came before Lord Cottenham possessed any public or human interest; and no man was less inclined to make capital out of a dramatic situation. In the piracy of the Royal etchings (Prince Albert *v.* Strange, 1 Macnaghten and Gordon, 40) the spectacle of the Prince Consort seeking protection and an injunction in the Queen's Court against one of her subjects was treated, and rightly, as a mere incident in everyday practice.

[3] *Life of Lord Campbell*, ii. 207.

Nottingham,' was the verdict of the same authority, whose own studies, we may add, scarcely qualified him, at that period at any rate, to adopt so professorial a tone, 'and his skill in deciding cases arises from a very vigorous understanding, unwearied industry in professional plodding, and a complete mastery over all the existing practice and all the existing doctrines of the Court of Chancery.'

His demeanour in Court is said to have been dignified, but austere to the verge of harshness, and he possessed the gift of being able to impress his personality upon all who came before him. By no means free from personal antipathies, which he took small pains to conceal, he was too self-reliant to fall under the sway of any individual counsel. There was no one who practised before him who could be said to have the ear of the Court, or 'to lead him by the nose.' His clearness of mental vision was remarkable, and it was seldom that a material fact was allowed to escape him in the course of an argument, or that a sophism, however ingenious, passed undetected. He had a singularly disconcerting habit of condensing a specious train of reasoning into a sentence or two of his own, and presenting the result in all its naked deformity to the discomfited parent.

It is very awkward, observed one of the counsel most frequently employed in his Court; he just puts it to you shortly, and asks, 'Is that your argument?' adding quietly, 'I only wanted to know, that's all,' and then, when he sees he is right, he sinks back in his chair, and it is all over.[1]

'That won't do, you know,' from the lips of the late Mr. Justice Cave was not more conclusive.

His gravest defect as a judge was his 'indomitable obstinacy of adherence to an opinion which he had once formed.'[2] An admirable illustration of this is afforded by his judgment in the O'Connell case;

[1] *Law Magazine*, xlvi. 285. [2] *Ibid.* 283.

The opinion I have now expressed *I formed early in the argument at the Bar.* I have carefully considered all that has been urged at the Bar or suggested by the majority of the judges (who were opposed to him in the proportion of seven to two) but I have not found any reason for altering my original opinion.[1]

With such strong prepossessions it was most essential that the facts of a case should be laid before him in the most effective manner; for when once his lordship's mind was made up there was no *locus pœnitentiæ*. On one occasion an unlucky client who besought his counsel to apply for a re-hearing was met with a downright refusal—

and I tell you more, sir, that if an angel were to come down from heaven to ask the Lord Chancellor to reconsider his opinion after such a judgment as he has just given he would most probably commit him for a contempt.

Yet there are reported cases in which Lord Cottenham was induced not only to change his mind but actually to reverse his own decisions; and the authority of a judgment obtained at such a cost was unimpeachable. There was a certain Gladstonian twist in his mind, a burning desire to reconcile two incompatibles; and the task of recantation was marked by a laboured attempt to prove that his previous judgments did not carry the consequences that were imputed to them. The same mental process was observable when, as not unfrequently happened, he was resolved upon getting round a decision which, though binding on him, did not command his approval. On these occasions he was generally right, in the eyes, at any rate, of the lawyers who came after him, but his efforts to refine away the meaning of the obnoxious cases, and his occasional tendency to bend the facts to meet the law, did not always tend to edification.[2]

[1] *State Trials*, N.S. v. 898.

[2] Compare Tullet *v.* Armstrong and Scarborough *v.* Borman (4 Mylne and Craig, 377) with Massey *v.* Parker (2 Mylne and Keen, 174); and see Devisme *v.* Devisme, 1 Macnaghten and Gordon, 684.

Perhaps the highest measure of his qualities is to be found in the praises of some of his most learned contemporaries. Serjeant Manning dedicated to him the 'Serviens ad Legem'

as a tribute of respect to the dignity and integrity of his public conduct, and to the acknowledged unrivalled excellence of his judicial administration.

And Lord Kingsdown, who, as Mr. Pemberton Leigh, had been his rival at the Bar, and afterwards practised regularly in his Court, declared that

Cottenham was one of the best judges I ever saw on the Bench. . . . In my opinion the business in the House of Lords was never so well done as during the session in which Lord Cottenham sat alone, Brougham being absent, from the death of his daughter.[1]

Among questions of novelty which came before him in his judicial capacity were those relating to the Reformed Municipal Corporations. The clause in the Act of 1835 dealing with the charity property held by these bodies had provided that the Court of Chancery should appoint trustees of such trust estates as were not duly separated and conveyed by August 1, 1836. When that day arrived it was found that the newly established bodies had done little or nothing towards arranging their affairs, and upon the Chancellor, assisted by the Vacation Master, devolved the appointment of trustees to practically the whole of the charity estates held by corporations throughout the country. The maladministration of the charity funds had been one of the chief blots on the old close corporations, and it was no easy task to hold the balance even between the conflicting claims of Radical and Tory, Church and Dissent. Wherever pure questions of law had to be decided, or mixed questions of law and fact had

[1] *Reminiscences of Lord Kingsdown*, 111. The writer adds, however, 'Langdale would probably have made a better Chancellor as regards politics and legislation.'

to be disentangled, Lord Cottenham's judgments were accepted then, and stand to-day, as the embodiment of technical accuracy and good sense.[1]

They gave much umbrage locally, however, to the disappointed parties, and the member for Ludlow, Mr. Lechmere Charlton, wrote so insulting a letter to Master Brougham in relation to the Ludlow charities that the Chancellor committed him to the Fleet for contempt of court.[2] The Commons Committee of Privileges refused to interfere, and it was with great difficulty, after several weeks of imprisonment, that a surly apology was extracted from him. Both Lord Cottenham and William Brougham seem to have made up their minds that the majority of the charity trustees in each corporation should be 'Whigs and something more.' And the effect of this determination was practically to plant everywhere a Whig garrison in what might or might not be a Whig fortress. For a long time to come the political complexion of the corporations was largely coloured by the infusion; we can understand the suspicion with which Lyndhurst regarded the Bill and its consequences.[3]

Cottenham had also to bear the brunt of a series of attacks in the House of Lords, where he was freely charged with 'swamping' the magisterial benches throughout the kingdom by partisan appointments and with disregarding the recommendations of the Lord-Lieutenants. Lord Harewood took the leading part with a list of cases culled from the West Riding of Yorkshire, and he was supported by the Duke of Wellington and Lords Wharncliffe and Warwick, while Lord Lyndhurst supplied a striking illustration from Edinburgh where to a magistracy composed of forty-four Whigs and twenty-one Conservatives the Chancellor had added eighty-seven Whigs and Radicals.[4] No doubt Cottenham, whose politics were part of his very being, took good care of his friends, and

[1] See e.g. *The Norwich Charities*, 2 Mylne and Craig, 275.
[2] 2 Mylne and Craig, 316.
[3] *Vide supra*, 118.
[4] Hansard, xliii. 1272.

his appointments may not always have been above criticism. But the magisterial bench has always been a means of rewarding political services, the Tories had had a very long innings, most of the Lord-Lieutenants were of that persuasion, and it did not lie with the following of Lord Eldon to complain of exclusive dealing.

The sort of prejudice with which he had to contend appears sufficiently in an insolent letter from the Duke of Newcastle, evoked by his appointment of a Dissenter to the magistracy.[1] And the Duke had the additional insolence to offer to withdraw the letter if the Chancellor would cancel the appointment. Cottenham without hesitation had him removed from the lord-lieutenancy of Nottinghamshire, and the Duke of Wellington, to whom he appealed, returned an emphatic 'Serve you right.' He might have had some difficulty in obtaining this exercise of the prerogative in the former reign, but the accession of Queen Victoria had firmly established the Whigs in the Royal graces. It fell to Cottenham's lot to play a conspicuous part in the accession ceremonies and to carry the Great Seal at the coronation. At the request of his colleagues in the Cabinet he undertook the investigation of the title of the new King of Hanover to certain crown jewels which, under the will of his mother, Queen Charlotte, were annexed to that throne, severed from England by the demise of William IV.

Indeed Cottenham was a much more useful member of the Cabinet than was generally suspected. In a body essentially deficient in backbone the presence of a sturdy obstinate Whig who knew his own mind, untroubled by qualms of hesitancy, was a distinct boon. In the Bedchamber difficulty he took up a decided line; he summed up the situation in a pithy phrase, 'the key has only half turned in the lock,' and the adoption of his opinion that there was no ground for any further interview between the Duke and Lord Melbourne put an end to the crisis, and gave the Whigs two more years of office.[2]

[1] Greville, 2nd ser. i. 195. [2] *Ibid.* 216.

When the fracas between Lord Durham and the Ministry was at its height he was approached to act as mediator, and his prudent behaviour in that capacity went some way towards smoothing, outwardly at any rate, the feelings of the wounded Proconsul.[1]

Lord Melbourne, to whom Cottenham's promotion had been originally a matter of necessity rather than of choice, had come to appreciate his Chancellor's value. He speaks of the latter's 'admirable' behaviour when he found himself unable, as Premier, to recommend Henry Pepys for the see of Chichester, on the ground of being a 'dubious man.' This somewhat obscure difficulty seems to have been rapidly overcome, for on January 27, 1840, the Chancellor's brother was elevated to the bishopric of Sodor and Man, from which, early in the following year, he was translated to Worcester. Henry Pepys, who so far neglected the parental injunction as to win a Fellowship at St. John's, Cambridge, had begun his clerical career with humble aspirations. In 1820 his father wrote of him that he 'has been so kindly received and patronised by such a respectable family as that of Lord Hardwicke that his views in the Church, already much gratified, are by no means limited to his present preferment.'[2] Twenty years later he had not advanced beyond a modest country rectory, when the influence of Charles, the plodding stolid brother, raised him to the dignity of lawn sleeves and the spiritual peerage.

During these years of office Cottenham's name recurs with tolerable frequency in Hansard, and his speeches are marked by good sense, if by no higher quality; but he never quite caught the tone of the House, and he was anything but a tower of strength to his colleagues. He stood up boldly enough to a vituperative attack from the Bishop of Exeter over an early draft of the Church Discipline Bill, finding himself in the very respectable company of Archbishop Howley; but he showed scant vigour or resourcefulness in the debates upon the Canada

[1] *Melbourne Papers*, 443. [2] *A Later Pepys*, ii. 338.

Declaratory Act.[1] He was successful with various minor measures of utility, and his more ambitious efforts to amend the law of insolvency resulted in the Act of 1 & 2 Vict. c. 110, abolishing that bane of Micawber's existence, imprisonment for debt on mesne process. It was for the future impossible for one man to be arrested and deprived of his liberty on the mere affidavit of another that the former owed him 20*l.*; and at the same time the genuine creditors obtained a more satisfactory method of enforcing their rights than by the venerable writ of 'elegit.' The Chancellor's original Bill had been somewhat emasculated in committee, and in the following year (1839) he obtained the appointment of a commission which reported in favour of the total abolition of imprisonment for debt, a recommendation which he attempted, some years later, though with imperfect success, to carry into effect.

One of his smaller legislative achievements deserves notice. A comparatively recent Act[2] had absolutely prohibited the clergy not merely from buying and selling, but from all *dealing* in the way of trade. The Court of Exchequer had construed it to mean that none of the large joint-stock companies which were then so rapidly increasing could recover monies due to them if by any chance there was a clergyman among the shareholders, and the Banking and Trading (Clerical) Co-Partnership Bill was the consequence.[3] And it must never be forgotten that it was during his Chancellorship that the present Wills Act became law, and that the first approach to modern simplicity in the science of the conveyancing of land was effected by the abolition of 'lease and release.'[4]

Shortly before leaving office Lord Cottenham made an effort to grapple with the growing congestion in Chancery. In spite of his own vast experience and

[1] *Supra*, 350. [2] 57 Geo. III. c. 99. [3] 4 & 5 Vict. c. 14.

[4] Only 'lease' disappeared during Cottenham's reign (4 & 5 Vict. c. 21). 'Release' was abolished under Lyndhurst in 1845 (7 & 8 Vict. c. 76, 8 & 9 Vict. c. 106).

facility, and of the utmost exertions of Lord Langdale and the Vice-Chancellor, the arrears showed no signs of diminishing. In 1839 he declared in the House of Lords that it would be impossible to get rid of the causes then down for hearing before him in less than three years; and, as a proof of the stress under which he and his fellow-judges were working, he mentioned that, on leaving the House of Lords at four in the morning, he had called at Vice-Chancellor Shadwell's house and found that functionary just risen to begin the duties of his day. Indeed the conflicting demands made upon the Chancellor by the Court of Chancery and the House of Lords had become too much for any single individual, however tough and seasoned. Pepys had been a desperate worker all his life, yet when in office as Solicitor-General he assured Sir Denis Le Marchant [1] that during twenty years he had been confined only one day to his room by indisposition. In 1841 he described himself to the same informant as sinking under fatigue and want of sleep, and he added that nothing but the dissolution of the Government had saved his life.[2]

His remedy for the block in Chancery was the appointment of two additional Vice-Chancellors, a measure which he failed to carry for reasons that have been already mentioned,[3] but which became law shortly after he quitted the Woolsack. His legacy to the profession took the shape of the 'New Orders in Chancery,' fifty in number. Issued in August 1841 they embodied the fruits of his long professional experience, and the suggestions of an informal committee consisting of the Master of the Rolls, the Vice-Chancellor, and Messrs. Wigram, Pemberton Leigh, and Sutton Sharp. These orders deal with a system of practice and of pleading that has long since passed away, but they were accepted at the time with gratitude as a genuine instalment of reform and of

[1] *Life of Lord Spencer*, 67.

[2] Lord Langdale mentions that in February of that year there was talk of the Chancellor going into the country for a short time to recruit his health, and of putting the Great Seal into commission, but he insisted on remaining at his post.

[3] *Vide supra*, 139.

anxiety on the part of their author not merely to give judgment according to law as it is, but also in the imperfect parts of the law to make it what it ought to be. Unhappily the orders themselves and the Acts from which they sprang [1] fell far short of the expectations founded on them, and ten years later the complaint rose loud that, as to the great bulk of Chancery grievances, the suitor and the practitioner were just as they had been in 1840.

The resignation of Lord Melbourne brought to Lord Cottenham a period of repose which was desirable for the sake of his health, but was in danger of becoming irksome to a mind which found little relaxation in literature or sport.

He cared little for general society and less for that of able and learned men, says Sir Denis Le Marchant. His conversation generally turned on the topics of the day, which he discussed with much shrewdness; and the downright view he took, both of men and things, was often enlivened by a vein of dry humour which gave much zest to his remarks.[2]

And in his Model Farm at Wimbledon he found that the direction of farming operations and experimenting with new kinds of machinery were pursuits almost as absorbing as equity.

The House of Lords in its appellate capacity, and the Judicial Committee of the Privy Council, were some compensation for the Court of Chancery, but their days of business were rare oases, and time must, often, have hung heavy on his hands. In these tribunals he rendered valuable public service; but to one of his extremely self-reliant temper the presence of colleagues on the Bench was unmistakably irksome. Doubt was unknown to him. Sitting with Lord Brougham in the House of Lords in 1839, he had decided without hesitation, but in a carefully written judgment, that the Presbytery of Auchterarder had acted illegally in deny-

[1] 3 & 4 Vict. c. 94, and 4 & 5 Vict. c. 52.
[2] *Life of Lord Spencer*, 67.

ing the rights of patronage, and that the General Assembly of the Church of Scotland had no authority to pass Acts or regulations infringing the rights of civil patrons.[1] This decision set the seal on the great disruption, and when three years later an attempt was made to obtain a reversal, on what was practically a rehearing before the same tribunal reinforced by Lords Lyndhurst and Campbell, Cottenham was brief and to the point.

I have not found during this discussion any real difficulty as to any of the propositions which were raised by the appellants at the Bar.'

We have seen how in O'Connell's Writ of Error he lightly brushed away the all but unanimous pronouncement of the Common Law judges on a point of criminal practice. A few years later, in the case of Smith O'Brien, he 'never had any doubt from the first time he read the papers that the errors assigned could not be maintained.'[3]

Lord Cottenham was out of office for rather less than five years, from September 1841 to July 1846. On the formation of Lord John Russell's first Administration he resumed his seat on the Woolsack as a matter of course. According to Campbell he was personally much more acceptable to the new Premier than if his accomplishments had been more varied and his powers more brilliant. We can well believe it from Lord John's own testimony:

Lord Cottenham, he wrote,[4] a direct man and a straightforward statesman, expressed to me his opinion on Sir Robert Peel's assent to the repeal of the Corn Laws—'either Sir Robert Peel foresaw the necessity of giving up his opposition or he did not. If he foresaw it, he was wanting in honesty when he persevered in his opposition. If he did not foresee it, he was wanting in wisdom, and is not fit to be entrusted with the direction of this great Empire.'

[1] Auchterarder against Kinnoul, 6 Clark and Finnelly, 646.
[2] Ferguson against Kinnoul, 9 Clark and Finnelly, 251.
[3] *State Trials*, N.S. vii. 378.
[4] *Recollections and Suggestions*, 276.

There is a simplicity about the dilemma which is peculiarly acceptable to the thoroughgoing party man.

He was the recipient of a remarkable legacy in the shape of the Small Debts Bill which had been introduced into the Upper House by Lord Lyndhurst, and became law after very little discussion.[1] No Chancellor before or since has enjoyed such a splendid harvest of patronage as sixty County Court judgeships at one swoop. Cottenham had always enjoyed the reputation of standing by his political friends, and it was asserted that the sixty new judges were, every one of them, 'good men and true,' of undoubted Whig principles, with the single exception of a gentleman who had been consulted by Lord Lyndhurst in framing the Bill upon the express promise of a judgeship.[2] At this distance of time it is impossible to determine whether the principles of those sixty officials were Whig or otherwise. But the charge of partisanship is considerably minimised when we are told that,

> finding that no provision was made for granting pensions to the judges of the abolished Courts of Request, Lord Cottenham generously appointed a large number of them to the newly created judgeships.[3]

Lord Cottenham's second Chancellorship lasted for four years all but a few weeks. It was distinguished in the main by the same virtues that had adorned his previous tenure of that office, but the glory of the latter house was not equal to the glory of the former. He had aged visibly, excessive toil had done its work, and the return to his habits of application was an effort to which, unknown to himself, he was unequal. There are few spectacles more pathetic than the declining powers of a public man who refuses to admit that he no longer

[1] *Vide supra*, 106.

[2] *Law Magazine*, xlvi. 287. As a matter of fact the Bill was not framed by Lord Lyndhurst.

[3] Sir Thomas Snagge, *Evolution of the County Court*, 12; the author adds that the effect of this upon the strength of the County Court judiciary was felt for several years.

possesses the 'strength which in old days moved earth and heaven.' In Lord Cottenham's case a very noticeable sign was the long delay in delivering judgment. All cases of importance and difficulty were allowed to stand over to the Long Vacation, to the great loss and vexation of the suitors; and it may be doubted whether the additional time thus given to the consideration of facts and authorities was not outweighed by the blunting of impressions formed during the trial and by the almost inevitable forgetfulness of crucial steps and incidents in the hearing. Always a stickler for routine, he would permit no deviation from the practice of the Court, however pressing the occasion; he even upheld the 'hourly warrants,'[1] which were one of the chief abominations of the Master's office. A less industrious man would have been open to the taunt that an inflexible adherence to rule was the course which gave least trouble. He certainly had acquired the bad habit of clearing his cause list by the constant 'direction for enquiries,' which sent the suit to the Masters until all facts conceivable and inconceivable, relevant and irrelevant, had been gone into. The practice, which often meant a delay of years and invariably a cruel amount of costs, was an integral part of the system, but it attained almost grotesque dimensions under Lord Cottenham.

It was commonly asserted that without a good stock of judgments to consider and commit to writing the Lord Chancellor would have found the tedium of the Long Vacation insupportable. But the growing habit of procrastination had disastrous consequences in the crop of arrears and rehearings, and even with the aid of the two additional Vice-Chancellors the state of business in Chancery was once more giving ground for serious complaint. A fresh branch of work had come within the purview of the Court, and as the growth of bankruptcy in the early years of the century had clogged the judicial

[1] By which a fresh fee was payable at the expiration of every hour.

machine, so the rush of applications under the Winding-up Acts was now overtaxing the strength of the Bench.

The great railway bubble of 1846 had just burst when Cottenham resumed office, and the wrecks of a hundred dazzling projects were being salvaged. The first impulse of the Chancery judges had been to avoid any addition to their labours which was not clearly imposed by statute; and a petition for winding up the London and Manchester Railway was dismissed by Vice-Chancellor Knight Bruce on the ground that the company, being only provisionally registered, was not within the Winding-up Acts. This was not at all to the Chancellor's satisfaction.

'In seeking to extend the jurisdiction of the Court of Chancery,' wrote Campbell, 'he reminds me of Hildebrand and the other Popes who subjected Europe to the tyranny of Rome.'[1]

He promptly overruled Knight Bruce, and, finding that the current of professional opinion was against his decision, he obtained a clause in the Winding-up Act of 1849, in which his view was adopted. There was much grumbling at the time, and the new law was denounced as being to the gain of no good man, and to the great distress of many unwary persons, who, 'though they at one period of their lives had thought well of some plausible but birth-strangled scheme, never had been guilty of the tortures of the Master's office.'[2]

But here again modern opinion and modern legislation are on the side of Lord Cottenham. And Cottenham, it should be remembered, was a master in company law, which, as a distinct branch of our jurisprudence, may almost be said to date from the days of his Chancellorship. There were malicious persons who, quite unjustifiably, attributed the ruling in that particular case to personal antagonism with Knight Bruce. But of his strong dislike for that Vice-Chancellor, whether due to personal or political causes, there is no room for doubt. It showed

[1] *Life of Lord Campbell*, ii. 207. [2] *Law Magazine*, xlvi. 286.

itself in indecorous ways, and was a commonplace of professional gossip. Under the easy sway of Lyndhurst Knight Bruce had indulged freely in those 'short cuts,' with the view of effectuating the administration of justice, which were so abhorrent to the soul of the Chancellor. On one occasion, when an amendment had been granted at the hearing of a cause, Lord Cottenham, on the appeal, asked for precedents, and when none were forthcoming, he blazed out on the 'relaxation of the practice of the Court upon which he had frequently of late taken occasion to express his opinion.' According to Lord Selborne [1] the seeds of mutual dislike had been sown

when that great lawyer, plain and dull of speech, had to endure what he regarded as daily affronts from his eloquent competitor. They bore fruit when the one sat as Judge of appeal over the other, for if Lord Cottenham did not approach his judgments with a disposition to reverse them, it was scarcely a less evil that Knight Bruce thought he did.

Knight Bruce was not the only judicial sufferer from Cottenham's prejudices. In the case of Dawes *v.* Bettes, when overruling Vice-Chancellor Wigram, who had allowed certain exceptions to the Master's report, he used language so insulting to the learned judge that it was carefully excluded from the published judgment; and the victim was driven to protest against such observations being made in open Court.[2]

Nor was his demeanour to the Bar more agreeable or encouraging. At the time of his resignation in 1841 he had been especially praised for his 'impartiality as between counsel and his attention to the youngest member of the Bar, given as readily as to the most distinguished of her Majesty's counsel.' But during his later years his temper grew irritable, he dozed on the Bench, and though,

[1] *Memoirs, Family and Personal*, i. 375.

[2] On the authority of a writer in the *Law Magazine*, xlvi. 286. An examination of the report (12 *Jurist*, 709) shows clearly the hiatus.

like the late Lord Coleridge, he often heard a good deal with his eyes shut, he could not restrain his annoyance at being detected. His personal antipathies became more pronounced, and though young men on the whole did not dislike him because he showed no favour to their seniors, it was with fear and trepidation that the inexperienced and the sensitive appeared before him. Still, Lord Selborne, while fully admitting his defects and prejudices, insists that he heard arguments patiently; and on one occasion the marked attention which he paid to the young barrister who was one day to occupy his seat stood the latter in good stead with the solicitors.[1]

The difficulties of practising before the Chancellor were enhanced by the imperfections of his utterance, which often rendered his interjections and rebukes inaudible and unintelligible. This was largely due to neglect of dentistry, and it was rather brutally suggested that the Bar should present the Chancellor with a subscription set of false teeth. But the weakness of his articulation and of the voice that now scarcely rose above a whisper was attributable to other causes. In November 1847 he had broken a blood-vessel in the throat; the rupture took place during a debate in the Lords, and though he bled copiously, he concealed the injury till the House had risen, when the Bishop of Worcester discovered that his brother's handkerchief was deluged with blood. For some weeks his life was in danger, he was confined to his room, fed on brown bread and ice, and forbidden to speak to anyone. He bore inconvenience and suffering with stoical resignation, and was back at work early in the course of the new year. On February 24 he moved the second reading of the Irish Encumbered Estates Act, which became law during the course of the Session.[2] And on the famous 10th of April, 1848, Campbell describes how he and Lord Cottenham resolved to confront

[1] *Memoirs, Family and Personal*, i. 372. Lord Selborne adds that, though opposed to the Chancellor in politics, he was one of the few juniors occasionally invited to his house.

[2] 11 & 12 Vict. c. 48. What is known *par excellence* as 'Lord

their fate like the ancient senators of Rome, and met at the usual hour at Westminster to hear Scotch appeals.

Henceforward, however, there was a decided diminution in his strength; he devoted his time almost exclusively to judicial work, seldom appearing in the Cabinet, and in Court he confined himself entirely to appeal work, refusing to hear original causes—an anticipation of the reform introduced a year or two later by Lord Truro. In May 1849 he had a return of his old malady, but he fought against it successfully, and in August Campbell speaks of him as looking very well, though suffering from hoarseness, and with his mental faculties unimpaired. Meanwhile he was suffering extreme annoyance from a matter which in his robuster days he would have simply brushed aside. A crazy attorney named Dimes had embarked upon an interminable litigation against the Grand Junction Canal Company, in the course of which he was committed by Lord Cottenham for breach of an injunction. In revenge he turned his attentions to the Chancellor, and, besides other methods of vexation, brought an action to set aside his judgment on the ground of interest, Cottenham having been discovered to be the holder of something like a hundred shares in the undertaking. What is more, he won his case in the House of Lords, but their Lordships, hardly deigning to acquit Lord Cottenham of any improper motive, proceeded to make exactly the same decree as that originally appealed from. Long before the judgment was given [1] he had not only quitted the Woolsack, but had left behind him the troubles of this transitory life; it was a common belief that Dimes had killed Lord Cottenham.

Throughout the early months of 1850 his unfitness for the regular discharge of his duties was becoming unmistakeable. His absences from Court became longer and more frequent; arrears in Chancery mounted up, and those who were most jealous of his fame and reputation

Cottenham's Act" was 10 & 11 Vict. c. 96, enabling trustees to pay money into Court.

[1] December 1852. 3 House of Lords Cases, 759.

felt that his retirement could no longer be deferred. Tenacious of office, the Chancellor was unwilling to accept assistance and extremely sensitive on the subject of his illness. And the Whigs were so little prepared with a successor that, as we shall see, the Great Seal had eventually to be placed in commission. But on May 27, his physicians having unanimously agreed that if he attempted business again it would kill him, Lord Cottenham abruptly resigned. His last public act was to issue a new set of Chancery Orders by which very material changes in the manner of Equity pleadings were effected, and the proceeding by writ of summons without bill or subpœna was introduced, the parent of the modern summary process on affidavit.

On June 11 the ex-Chancellor was raised to the dignity of an earldom, a promotion received with only a moderate degree of approbation by the public, who persisted in regarding it as the reward of his resignation rather than his services. A pamphlet on the subject supposed to be inspired by Brougham had as motto, ' The offence is *Rank*.'

Viscount Crowhurst and Earl Cottenham, as he now became, was indeed somewhat of a pluralist in the matter of honours. By the death without issue on October 5, 1845, of his elder brother, he had succeeded to one baronetcy, and the death, on December 9, 1849, of his uncle, Sir Lucas Pepys, had brought him another. But he was destined to a short enjoyment of his dignities ; he was a broken man, and a winter in a mild climate was prescribed as the only hope of recovery. He quitted England for Malta, and there seemed to make such progress that in the spring of 1851 he decided to venture home. The improvement was momentary, the journey premature. Passing northwards through Italy he was seized by his old enemy, and after a few days' illness he died at Pietra Santa in the territory of Lucca, on April 29, his seventieth birthday. More fortunate than his immediate predecessors, he left sons to succeed him ; the present Peer is his great-grandchild.

CHAPTER XIX

LIFE OF LORD TRURO TO HIS APPOINTMENT AS SOLICITOR-GENERAL

1782–1839

THOMAS WILDE, or Serjeant Wilde, as he was best known during his professional career, was a profound contrast to Lord Cottenham, whom he succeeded on the Woolsack, and had little in common with the other two illustrious men who are commemorated in this volume. Born at Warwick Square, Newgate Street, in the City of London, on July 7, 1782, he was the second son of a prosperous London solicitor, Mr. Thomas Wilde, senior.[1] He was educated, as became a City lad, at St. Paul's School, which he entered in 1789 at the age of seven. His name is still remembered by Paulines in connection with the Truro prize[2] for an English essay, which he founded in 1853 with the substantial gift of 1,000*l.* in grateful acknowledgment of the benefits derived at his Alma Mater.

But, though his elder brother rose to be captain of the school, Thomas Wilde himself quitted it at too early an age to be able to acquire more than a tincture of the classical learning for which St. Paul's has ever been distinguished. Nor did the laborious habits of his life afford the opportunity, even had he possessed the inclina-

[1] A writer in the *Law Magazine* and *Law Review* explodes the popular story that the future Chancellor's father began life as a Sheriff's officer. On leaving Merchant Taylors' School, he was immediately articled to a Mr. Impey, and out of professional hours he was a naturalist of some note and distinction.

[2] The winner receives a medal, and the balance of the prize money is given in books or in cash, according to circumstances.

tion, to repair the deficiencies of an education cut short too abruptly. When only fourteen he was articled to his father, and his reading throughout his life remained most limited both in kind and quality. And though at first he found the drudgery of a solicitor's clerk unendurable, it was not from any desire 'to pen a stanza when he should engross.' Commerce was to him a more alluring mistress than law. On one occasion he fled his home and the parental offices in College Hill, and it was some days before the youthful truant was found 'busily engaged in the Long Room at the Custom House, making himself acquainted with the mysteries of tare and tret, cocquets and averages.'[1]

The aberration was soon over, and Wilde settled down to his desk. 'Sure never man's prospects were brighter.' The ability and integrity of his father, designated 'Gentleman Wilde' from the courtesy of his demeanour and the completeness of his dress in the costume of the period, had borne fruit in a lucrative and rapidly extending practice. The son was possessed of exceptional qualifications. In Lord Tenterden's words he had ability enough to succeed without industry, and industry enough to succeed without ability. Prodigious powers of work, great acuteness, and an intimate knowledge of the minutiæ of all commercial undertakings formed an ideal equipment for his profession. He was admitted attorney in 1805, and the spirit of independence, which was always his marked characteristic, made him decline a partnership, either in his father's office or in that of the firm where he had completed his articles. He elected to practise on his own account in Castle Street, Falcon Square, and with almost unprecedented rapidity he had laid the foundations of a great 'City' business, dealing almost exclusively with charter-parties, policies of insurance, and bankruptcy.

But his ambitions had taken a higher flight; the swift acquisition of wealth counted for little, as was

[1] Bennett, *Biographical Sketches*, 98.

shown in all the actions of a life marked by lavish generosity. His eldest brother John, who afterwards held high judicial office in the Colonies, was already making good progress at the Bar, and thither Thomas elected to follow him. His duties as attorney and solicitor had carried him much into Court, and had brought him into contact with all the most eminent advocates of the day. It had been his province to retain and instruct such men as Garrow and Scarlett, Shepherd and Best; he had striven to penetrate the secret of their success, and he had been fired by their example. Sacrificing a brilliant certainty for the most precarious of all the roads to fortune, but conscious of his powers, he disposed of his practice, and in March 1811 he entered as a student at the Inner Temple. Four years later he took out a certificate as a special pleader beneath the Bar, and on February 7, 1817, he was duly called.

The advantages of a barrister who has served an apprenticeship in what is still regarded as the inferior branch of the profession are manifold. He leaps into work, full armed like Minerva from the brain of Jove; 'papers,' sometimes merely complimentary, sometimes the fruit of a well-earned confidence, flood his table, and if he is doomed to failure in the new venture it is not from any want of opportunity. These truths were not so fully recognised in 1817 as they are to-day. The social gulf which divided the full-blown barrister from the attorney was widely fixed and rigidly maintained by Circuit discipline, and those who crossed it were few in number. The modern County Court had not yet created the solicitor-advocate. Wilde was thirty-five years of age, and it was impossible to gauge his forensic prospects with any approach to certainty. He had to contend against an unmusical and somewhat rasping voice, a monotonous delivery, and a decided impediment in his speech; nor was he dowered with those gifts of port and presence which have made the fortune of men with little else to commend them. Thick-set and short of stature,

with plain plebeian features, he was destined to show that in his case, as in that of Dunning, physical disqualifications are powerless before industry and talent. Of the former virtue he is a standing example to all time. Campbell declares that he was the most laborious man who ever entered the profession,

his daily habit being to go to chambers at six o'clock in the morning, summer and winter, to remain there until he went into Court, and only going home to dinner for a few minutes, to return to chambers and to remain there till between two and three in the morning.[1]

On hearing that Follett had yielded to slumber when reading his brief in the Serjeants' case at night in his circuit chariot, Wilde is said to have exclaimed impatiently, 'Silly fellow! What can he want with sleep?'[2]

During his years as a student and a certificated pleader Wilde had made a systematic and determined study of English law. Reversing the usual order, he started with a complete knowledge of the practice, to which he now added a thorough application of the theory. His familiarity with mercantile affairs, with the ins and outs of the shipping trade, and with the mysteries of bookkeeping, enabled him to clothe the dry bones with flesh, while to his orderly and logical mind the technicalities of pleading were a perpetual feast. We can almost hear him ejaculating, with Uriah Heep, 'Oh, what a writer Mr. Tidd is, Master Copperfield!'

It is needless to say that his rise at the Bar was rapid. The ample connection which he had formed as a solicitor gave him the start,[3] but he was as successful on

[1] *Life of Lord Campbell*, ii. 125. There is an obvious touch of exaggeration in this. One of Wilde's 'devils' has recorded that they used to stop work when St. Paul's struck twelve; but he admits that when engaged on some black-letter case in the Pleas, their labours would be extended to daylight. *Memoirs of Matthew Davenport Hill*, 57.

[2] Bennett, 128.

[3] His younger brother, Edward Archer Wilde, the father of Lord Penzance, was a partner in the family firm, Wilde, Rees, Humphry & Wilde.

the Western Circuit, where he was utterly devoid of interest, as at Westminster or the Guildhall. It was a dire struggle at first; for barristers are human, and the appearance of this sturdy son of the people, who snapped up the briefs without having undergone the drudgery of sessions or of devilling, was a disquieting apparition. Frowns from the Bench, elbowings and cold shoulders at the Bar, were the penalty for a bag prematurely swollen with spoils. But this phase was soon over. Wilde possessed the prime requisites of an advocate, courage and firmness of character, and when the cause of his client was endangered he would stand up to judge or King's Counsel like a tigress robbed of her whelps. While his innate shrewdness warned him when persistence against the Court was prejudicial, his pugnacity and skill enabled him to pay back to his learned brethren of the Bar their own with usury. On his first assizes at Exeter the leader of the Circuit, against whom he was engaged, tried to put him down by brow-beating and by openly expressed contempt. Wilde retaliated with such vigour that the assault was never repeated, and the dauntless junior found seventeen retainers at his lodgings that evening.

Though never an orator, Wilde had at command a good flow of plain, nervous English. The impediment in his speech took the shape of an inability to pronounce certain words. Of these he drew up a list, to which he affixed the most appropriate synonyms, and he trained himself to substitute the latter without a moment's hesitation, if accident pulled him up short at a fence which he was unable to negotiate.[1] Conscious of natural defects and of the fact that he had been trained in a school widely different from the upbringing of his competitors, he had resolved that no shortcomings or peculiarities on his part should be a bar to his own professional success or a cause of damage to his clients.

[1] Lord Lyndhurst in the House of Lords. March 14, 1856. Hansard, cxli. 127.

To remarkable powers of precise arrangement, to tact both in managing witnesses and jury and in dealing with difficult questions of law, Wilde united extreme pertinacity in argument. Shortly after his call he met in the street an old acquaintance who had been convicted of a misdemeanour and was moving in desperation for a new trial. 'Why aren't you employing me?' he asked, only to be told that the defendant had already instructed two counsel, and was at the end of his resources. 'Don't let that deter you,' was the rejoinder; and on the appointed day Wilde appeared, brief in hand. His two seniors were driven to abandon their argument at an early stage by the openly expressed hostility of the Court; but Wilde, convinced that his client was the victim of a conspiracy, insisted upon being heard to a conclusion. After a three hours' struggle the judges were won over, and a new trial granted, with the remark from the chief, 'We now see from whose quiver the arrow has been aimed.'[1] On another occasion, when he found that in his absence from Court his leader had abandoned a motion on a judicial intimation that to argue it was merely a waste of time, he demanded to be heard, and again succeeded in obtaining his rule. And when he conceived that from any cause his clients had failed to obtain fair play, no scruples debarred him from saying so. Baron Garrow one day had displayed both heat and bias against him, and the next morning, in another case before the same judge, Wilde dilated to the jury with much severity on the evil consequences of judges departing from the calm discharge of their duty. Garrow took it in good part, and after the case was over sent for

[1] The anecdote is preserved in what was then the organ of the solicitors (*Legal Observer*, vol. 51, 64). Wilde's conduct, however disinterested, in volunteering his services gratuitously, was a grave breach of etiquette, and helps to explain Denman's remark (*Life*, i. 160) that in 1820 he 'did not stand high in the esteem of the profession'; and see Lord Selborne, *Memorials, Family and Personal*, ii. 130. The conventional prejudices which hedge round what used to be called 'huggery' are always a stumbling-block to the solicitor who has been recently called to the Bar.

him. 'So, young man, you amused yourself last night in putting a rod in pickle for me. Well, I deserved it.' [1]

A steadily increasing practice might have failed to bring Wilde before the public eye, had not a turn of fortune engaged him in perhaps the most famous forensic struggle of the century. When the Bill of Pains and Penalties against Queen Caroline was introduced, her Attorney- and Solicitor-General had not unnaturally imagined that the arrangements for the defence lay within their province, and they were astounded to hear that of her own motion Caroline had retained Mr. Wilde as their colleague. The choice was most distasteful to both of them, and, according to Denman,[2] it 'rendered Brougham outrageous.' Wilde was of less than four years' standing, the trail of the attorney still hung about him, and it was known that he had been pressed upon the Queen by Alderman Wood, for whom he had recently appeared in a mining cause. The alderman's suspicion of Brougham was as notorious as the dislike of the latter for 'Absolute Wisdom,' [3] and there was a strong feeling among the other counsel that Wilde had been brought in to represent those 'secret advisers' who, from first to last, were the bane of their cause.

Both Brougham and Denman have admitted how groundless were their fears.[4] On acquaintance all prejudices vanished, and Wilde's talents and energy were at once appreciated. 'Extremely able and acute,' says Denman, 'generally very judicious, always active and

[1] To the present generation, Garrow, an advocate of extraordinary power, but perhaps the most illiterate man who ever was made a law officer or reached the Bench, is barely a memory. Yet some of his sayings deserve to be rescued from oblivion. 'You see, gentlemen,' he once said to the jury, 'the mind and the body have a close, an intimate, an inseparable connection; gentlemen, they chum together.' And again in passing the death sentence, 'Prisoner at the bar, you will ere long appear before another and all-merciful Judge, who will hear with patience all you have to say, and, should He feel a doubt, will give it in your favour.'

[2] *Life of Lord Denman*, i. 160.

[3] *Vide supra*, 232.

[4] Denman, *loc. cit.*; Brougham, ii. 381.

persevering in the highest degree, his habits as an attorney qualified him for many things to which counsel are incompetent.' This last commendation is somewhat equivocal, especially in the light of Brougham's remark [1] that 'Wilde, retaining the old habits of an attorney, used till checked by us to propose that Vizard or whoever examined our witnesses should present things to their minds.' But anyone who is conversant with the machinery and conduct of a great cause will understand the value of a counsel saturated with that minute and technical knowledge to which neither Brougham, nor Denman, nor Williams could make pretence.

> In all that was done out of doors, whether in consultation or other preparatory measures, his acuteness, and the sagacity derived from experience, as well as from his patient habit of mind, and, it may be added, his nature somewhat prone to suspicion, were invaluable.[2]

In moments of exultation, when things were going well and the star of Caroline was in the ascendant, Brougham and Denman would assert, in the language of the prize-ring, that 'their sixth man would walk round the counsel for the Bill'—a boast less amusing, we may be sure, to Wilde than to Gifford and Copley.

Want of seniority relegated him of necessity to a subordinate place in the proceedings before the Peers, but he took his part in the examination of witnesses and in the legal arguments directed to the judges as to the relevance and admissibility of evidence, and his zeal and ubiquity won for him the confidence of the Queen in a measure which she bestowed on no other of her counsel save Dr. Lushington—a confidence which was shown in her appointment of them as her executors, to the exclusion of her Attorney- and Solicitor-General.

The qualities which recommended him to Caroline of Brunswick lay deep at the root of Wilde's success. He had the power, to an exceptional degree, of impressing

[1] *Life of Brougham*, ii. 395. [2] *Law Review*, xxiii. 350.

T. WILDE, ESQ.
Barrister-at-Law
August 1820

his clients with the conviction that their interests were his engrossing care, and that, for the time being, no other case existed for him. Nor was this art or affectation. He had the genuine gift of absorbing himself heart and soul in the affairs of those who retained him, of believing absolutely in the justice of their cause. On their behalf no drudgery was too great, no labour too exacting ; and there could be no mistake as to the eagerness, the anxiety, with which he watched every vicissitude of the cause. The client whose life, whose fortune, whose hopes of happiness were at stake felt that every pang which racked him was shared by his advocate. And solicitors felt that, when they had secured Mr. Wilde, half the responsibility was lifted from their shoulders. There was no fear of being thrown over at the last moment, of hearing the case opened from an unread or ill-digested brief. Consultations were not a mere opportunity for counsel to pick up his facts, but a serious ordeal in which the strength and weakness of the case would be probed to the bottom. It was no uncommon event for the solicitor to find himself recalled late at night or early in the morning to satisfy some doubt that had occurred to the ever active mind of the advocate.[1]

For advocacy pure and simple Wilde was as yet only permitted an occasional opportunity. A stuff gownsman of very junior standing, he could not aspire to the honours of silk, and his work in Court was mainly limited to opening pleadings, examining witnesses, and arguing demurrers, or moving for rules. The order of the coif, however, was practically at the disposal of any barrister of seven years' standing who chose to apply for it, and at the earliest possible moment he made his application. It was necessary for the newly made Serjeant to attend on the Chancellor in order to complete the ceremony of affixing the coif. Wilde had distinguished himself by a brilliant argument in a bankruptcy case in Chancery

[1] See Serjeant Ballantine's *Experiences*, 271.

a few days earlier, and after concluding the formalities Lord Eldon said to him :

You will rise high in the Common Pleas, but you will never make a greater display of ability than you did last week in another Court.

It was in the Easter term of 1824 that Wilde was called to the degree of Serjeant-at-law, after he had 'counted'[1] and distributed his rings bearing the motto, 'Regi regnoque fidelis.' In 1827 he was appointed King's Serjeant, and ultimately attained the rank of Queen's Ancient Serjeant. From the very first he sprang at a bound into one of the biggest Common Law practices of his own or of any other day. Now, at last, his peculiar gifts had full scope. In his diary for May 28, 1824, Crabb Robinson tells how he

went down to Westminster to hear Serjeant Wilde in defence of the British Press for a libel on Mr. Chetwynd. He spoke with vehemence and acuteness combined. His vehemence is not united to elegance, so that he is not an orator, but the acuteness was not petty. He will soon be at the head of the Common Pleas.[2]

Within a very few years Wilde was not only at the head of the Pleas, but the leader of the Western Circuit, and

[1] The following description of counting is taken from a period (1851) when the ceremony was much divested of its ancient solemnity. The newly made Serjeant, in this case Baron Martin, appeared in the Court of Common Pleas, and read a 'count' in an action of Dower, as follows: 'Yorkshire to wit—Ann Ring, widow, who was the wife of William Ring, Esq., by John Jones, her attorney, demands against Charles Davies the third part of ten messuages, ten barns, &c., in the Parish of Ripon in the County of York as the dower of the said Ann Ring of the endowment of William Ring, deceased, heretofore her husband, of which she has nothing, &c.' The senior Serjeant in Court, Serjeant Channell, then demanded that the writ of dower should be read. Serjeant Byles, the next Serjeant in point of seniority, then said, 'I imparle.' The Chief Justice said, 'Be it so; brother Martin, do you move?' Serjeant Martin bowed in the negative, and the proceedings were at an end.

[2] Crabb Robinson, ii. 272.

possessed of an overflowing business, which carried him into both the other Courts at Westminster and before the Bar of the House of Lords.

He was skilful and adroit when management was required, but his skill in argument was shown in grappling with the difficulties of a case rather than in avoiding them, and his dogged perseverance snatched many a verdict out of the fire, while his gifts of analysis and arrangement enabled him to present his facts in the manner most calculated to impress and carry conviction. The classic instance of Wilde's powers of persuasion was given in the case of Small *v.* Attwood.[1] Sugden had been counsel for the unsuccessful defendant in the Court of Exchequer, but he was obliged to return his brief when the case was set down for appeal in the House of Lords. Wilde was retained in his place. His instructions were contained in several large wooden boxes full of papers, and were accompanied by a fee of four thousand guineas.[2] After a hearing of forty-eight days, eleven of which were occupied by Wilde's speech, the judgment of Lord Lyndhurst was reversed, a result which was universally attributed to the industry of the Serjeant and to his complete mastery of the involved and intricate questions of fact and of account. His success was the more remarkable that he was suffering agonies from tic-douloureux, and had to obtain permission to address the House without his wig.

No wonder that there was the keenest competition for his services. On one occasion an issue was referred from Vice-Chancellor Shadwell to be tried at law, in which partnership transactions of long standing, involving several hundred thousand pounds, were disputed.

[1] *Vide supra*, 84 and note.

[2] The original figure marked was 3,000*l.* but the Serjeant's clerk insisted that the amount was insufficient in view of the fact that his master would have to give up Circuit and decline all other engagements while the case was pending. Some little time before the hearing Wilde's client had presented him with a pair of carriage horses, promptly dubbed Small and Attwood. The demise of one of these was the cause of a ludicrous misunderstanding (Ballantine, 272).

During the argument the Counsel on the part of the Plaintiff, Mr. Knight Bruce, observing the probable result as to a reference at law, beckoned to the solicitor's clerk, and requested him instantly to run down to the Temple and retain Mr. Serjeant Wilde. The same thought occurred to the leader on the opposite side, the late Lord Chancellor Campbell, and he desired his client to make all speed and retain the learned Serjeant. The plaintiff's solicitor's clerk, however, was first at the chambers in the Temple with the formal retainer; but unfortunately he had not with him sufficient cash to pay the usual fee. The defendant's solicitor's clerk arrived two minutes afterwards with another retainer, and had the necessary fee. A discussion then arose as to which party had the right of retainer. The Serjeant's clerk, however, satisfied of the solvency of the plaintiff's solicitors, at least to the extent of a guinea fee, decided that the plaintiff had the right. The defendant's solicitor's clerk thereupon coolly proposed that they should *toss* for the Serjeant, a proposition which the other indignantly repelled.

Mr. Bennett, who tells the story,[1] was himself junior counsel with Wilde in the case, and he was present at the special consultations with an experienced accountant, which the Serjeant required. These consultations extended over nearly a week, and would usually last from ten in the morning until late in the evening, with only an hour's interruption for refreshment; nor was he satisfied until with his own eyes he had gone through every item in the original books, turning from waste-book to journal, from journal to ledger, just as if he were back once more in his old offices in Falcon Square.

Yet with all his acuteness, industry, and zeal Serjeant Wilde possessed the defects of his qualities. Excessive eagerness led to over-elaboration and to repetitions which sometimes exasperated the Court or wearied the jury. He was so determined that every point, good, bad, or indifferent, should be raised on behalf of his client that he was sometimes prone to smother a strong case in the dust raised by untenable arguments. He

[1] *Biographical Sketches*, 112.

had the advocate's natural gift for seizing the weak point in an enemy's position; he was not always so perspicacious in the survey of his own. He never quite shook off the attorney's instinct for overloading the coach, and we may be sure that his willingness to empty the full contents of his brief on the head of his adversary did not lessen his popularity among the dispensers of patronage, who love, above all things, a fighting counsel.[1] This propensity was encouraged by the leisurely surroundings of the Court of Common Pleas, where time was of no particular consequence to anybody; and the moderate amount of business on the Western Circuit permitted an expenditure of energy over its cause lists which would have been impossible in Lancashire or Yorkshire. Wilde never acquired the faculty of putting his case tersely and resting it on a few broad principles, and he was never such a perfect machine for verdict-getting as Scarlett.

Extreme tenacity in argument, however acceptable to solicitor and client, and however successful it may prove in the long run with juries or even with judges, is seldom popular with the latter. Lord Wynford, who presided over the Pleas for some years after Wilde had assumed the coif, was an irascible gentleman at the best of times, and Wilde's soundness of wind and imperviousness to discouragement from the Bench had an especially irritating effect upon his temper. The scenes between the two were 'painful, and frequent, and free.' The Serjeant's clients sometimes suffered from the prejudice with which he inspired the Court, and Wilde, in the retirement of the robing-room, would vow that impeachment was too good for my Lord. On the other hand, it was asserted that he always carried a blank bill of exceptions in his red bag when he went before the

[1] This *genus* of advocate has been coarsely described as a man who, 'for three and one would rip the blooming floor up.' The 'one' guinea, it should be perhaps explained, is the fee allowed on a conference in addition to the three marked on the brief.

Chief Justice. Gradually a *modus vivendi* was established, and the altercations diminished as Lord Wynford came to accept the situation. 'Although I may sit as chief justice on the Bench,' he is reported to have said, 'the ruling spirit in this court is Serjeant Wilde.'

The Serjeant made his first entrance into political life in October 1829 as the Whig candidate for Newark, a borough in which the territorial influence of the Duke of Newcastle had hitherto reigned supreme. The ducal nominee on this occasion was Michael Sadler, of Leeds, a Tory philanthropist who was in many striking respects the forerunner of Lord Shaftesbury. Wilde fought stoutly, with a most able lieutenant in the shape of Matthew Davenport Hill, afterwards Recorder of Birmingham. In the course of the contest the hitherto unsuspected talents of Mr. Wilkins,[1] the future Serjeant, and then a schoolmaster in Newark, were unearthed, and his very considerable oratorical powers were enlisted on behalf of Wilde and the Blues. And Charles Lamb, *teste* Mr. Lucas,[2] was induced to assist the good cause with some electioneering squibs, of which the following verses may suffice as a sample :

> Freemen, do not be beguiled,
> One and all go poll for Wilde;
> Now's the time to strike the blow,
> Lay your daring tyrants low.
> . . . .
> Even now the Bill is fil'd
> And your counsel Serjeant Wilde;
> He will make the Sadler *sidle*,
> Stir him up with *bit* and *bridle*.

[1] The name of Serjeant Wilkins has become portion and parcel of the dreadful past. No man at the Bar had stranger vicissitudes, and his career would hardly be possible under modern conditions. It is to him I always fancy that Micawber owed his Christian name.

[2] The *Works of Charles and Mary Lamb* (edited by E. V. Lucas), v. 341–2. Many of Wilde's scanty hours of relaxation were spent round the humble but festive board of the Lambs in the Temple on their 'Wednesdays;' *loc. cit.* vii. 856, and Talfourd's *Final Memorials of Charles Lamb*, ii. 77–8.

If you would be Freemen styled,
Go at once and vote for Wilde ;
If you'ld be a Ducal Twaddler,
Then turn round and vote for Sadler.

The ducal tyrant, however, was too strong for the freemen, and the tenantry who had obeyed the summons of the poet and polled for Wilde were promptly served with notices to quit. The townspeople held an indignation meeting, which the Duke, with some irony, was invited to attend. 'You meet to deliberate upon an interference between my tenants and me,' wrote the outraged nobleman. 'Is it presumed, then, that I am not to do what I will with mine own ?'[1] Unconsciously his Grace had given one of the catchwords of Parliamentary Reform, and Newark became henceforward a recognised battlefield for the contending hosts ; but his influence was still unimpaired at the General Election of July 1830. Wilde stood again on that occasion, and was again beaten, 'bearing his misfortune with the most perfect composure.' His revenge came in May of the following year, when the tide of Reform was at the flood, and he was returned, though with a Tory colleague,[2] as member for the borough.

During his first two sessions Wilde took a fairly active part in debate, but it cannot be said that he attained any conspicuous measure of parliamentary success. He confined himself mainly to legal topics, and the flavour of Nisi Prius was too strongly in evidence. His most successful speech was in support of Brougham's Bankruptcy Bill.[3] Once, however, he was roused into effective reply. He had been engaged to prosecute with the Attorney-General before the special commission

[1] *Memoir of Matthew Davenport Hill*, 103.

[2] Mr. Farnworth Hindley.

[3] Hansard, 3rd ser. viii. 41. On the second reading of the Reform Bill (second version), July 6, 1831, Campbell relates (*Life*, i. 505) how he 'magnanimously procured a seat for Serjeant Wilde,' and did what he could, though unsuccessfully, to procure him a hearing ; 'he offered himself, but William Brougham was preferred.'

appointed to try the Hampshire and Dorsetshire machine breakers in 1831. The conduct of the county magistrates and of the Crown counsel was severely assailed in Parliament by Colonel de Lacy Evans and Mr. Joseph Hume ; and a farmer and his wife, named Deacle, who had instituted proceedings for assault against Mr. Bingham Baring, complained that Wilde had traduced them in Parliament while there was actually a retainer in his chambers to appear on their behalf at Winchester Assizes.[1] The Serjeant vindicated the magistrates with much warmth and feeling, and protested vehemently against the notion that it should be in the power of an individual to stop his mouth in Parliament by the mere delivery of a guinea retainer.[2]

In December 1832 the first Reform Parliament was elected, and Wilde could have entertained little doubt of a triumphant return for his old constituency. But a new star had arisen in the firmament ; the Earl of Lincoln had brought to the notice of his father the merits of a certain young Student of Christ Church, and Mr. Morley has told us how on a Sunday morning in late September William Ewart Gladstone set off from Torquay for Newark and all that lay beyond.[3] The same historian, whose own electioneering experiences have been extensive, declares that in the contest which ensued 'the Serjeant did not play his cards skilfully.' Whatever that may mean, he found himself at the bottom of the poll, while his former colleague, Mr. Hindley, retained his seat, and Gladstone was the senior member for Newark. Wilde bade adieu to his former constituents in a speech marked by great depth of feeling, which drew

[1] Hansard, v. 158 ; vi. 395.

[2] No brief having been delivered, the effect of the retainer was merely to prevent him from appearing on the other side. To the non-professional mind it may seem that Wilde would have done better to have returned the guinea before making the speech. In all probability his clerk had never told him a word about it.

[3] *Life of Gladstone*, i. 90.

tears from many of the crowd and dimmed the eyes of the orator himself.

Wilde indulged in no further parliamentary ventures for the present, and went back, not ill-content, to his still increasing practice. His equanimity, however, was destined to be severely ruffled and his innate Conservatism to be aroused by one of Brougham's freaks. The right of the Serjeants-at-law to exclusive audience in the Court of Common Pleas,[1] while unfettered themselves by any corresponding restriction, was coeval with the institution of that venerable tribunal, and the exercise of this monopoly was a source of constant complaint. As it was forcibly put,

> the pleadings are drawn by a first-rate pleader, the cause is led by a first-rate Queen's Counsel, but if any incidental question arises a Serjeant must be retained and instructed and neither pleader nor leader can be heard.

The Serjeants themselves, as a body, though always including a certain number of exceedingly able men in their ranks, did not enjoy any great measure of confidence or popularity, and the ideal denizen of 'Sleepy Hollow' was typified by Snubbin and Buzfuz rather than by Copley or Wilde or Talfourd. Gossip declared that under the dynasty of the coif it was not at all unusual for the Court to rise at twelve or one because some learned brother had a cold; and professional critics wrote severely of the

> indolent gossiping colloquial habits of a domestic tribunal where one learned brother nods to another and then telegraphs a communication with the Bench that they intend giving themselves a half-holiday.

A short Act throwing open the Court to all members of the Bar would have been greeted with general applause, and there was plenty of driving-power in the first

[1] The exclusive audience only applied to sittings in Banc, not to witness actions.

Reformed Parliament to have carried it. This was not Brougham's way. In the course of a dinner at Serjeants' Inn, Wilde had imprudently dared the Chancellor to open the Court.[1] As a practical retort Brougham brought back from Windsor a mandate dated April 24, 1834, and bearing the sign manual of the King, but neither sealed nor countersigned.[2] This instrument purported to put an end to the exclusive right of 'practising, pleading, and audience' in the Court of Common Pleas hitherto exercised by the Serjeants, and to confer equality of right and privileges upon all members of the Bar, silk and stuff alike, according to their rank and seniority.

The indignation of the Serjeants may be imagined, and there was a strong feeling even among those members of the profession who benefited by the order that Brougham had counselled the Crown to exceed its powers. The mandate was, however, obeyed at the commencement of Trinity Term, and save for a formal protest from Wilde, which passed unregarded, no steps were taken during the reign of William IV. On the accession of Queen Victoria, however, it was resolved to test the legality of the order, and five of the Serjeants, Taddy, Wilde, Spankie, Atcherly, and Merewether, presented a petition to her Majesty in Council praying that she would be pleased to cause the legality and expediency of her predecessor's warrant to be duly investigated.

Though largely indebted to the industry and black-letter learning of Serjeant Manning, Wilde was the leading spirit in the proceedings. Much of his private practice was discarded, and for many evenings before the day appointed for the hearing of the petition prolonged consultations were held at his chambers in Serjeants' Inn.

[1] Bennett, 123.

[2] Serjeant Pulling (*Order of the Coif*, 101, 271) makes Campbell the author of the warrant, and exonerates Brougham. There does not seem to be any authority for the statement.

There, says Mr. Bennett,[1] who acted as jackal, the progress made in looking up old documentary evidence and other particulars was from time to time discussed, and plans of operation determined on. Those who usually attended were the Serjeant himself, Serjeants Taddy and Bompas, Manning and myself, and we seldom separated before midnight. In a corner of the Serjeant's room was deposited in his wicker basket the *smallest* dog then to be found in England, and the Serjeant's lady, who was almost invariably waiting in her carriage till the close of our sittings to take the learned Serjeant home, was attended by the *largest* dog that could at that time be found. . . . Having returned home more early than usual from one of these consultations, and just stepping into bed, I was surprised, about half-past eleven o'clock, to hear a loud ringing at the door-bell, and, upon enquiry, found it proceeded from one of the Serjeant's servants, who had been despatched with a note from him, asking me for the name of a reported case which had been the subject of deliberation at the conference, as he had neglected to make a note of it at the time.

The petition was heard in January 1839 before a committee of the Council presided over by Lord Cottenham, and packed with legal luminaries. Follett and Charles Austin argued for the Serjeants, Campbell and Rolfe for the Crown. Follett had imperfectly mastered his brief, which had indeed been delivered to him piecemeal from the consultations in Serjeants' Inn, and Wilde sat under his lee and prompted him audibly. Brougham interrupted and wrangled and played the part of a third Counsel against the Serjeants, but there was practical unanimity among the judges that the mandate was so much waste paper.[2] They were reluctant, however, to quash it, as a Bill to effect the same purpose was then in course of being drafted, and in the following May the Council intimated through their clerk that no judgment would be given until further notice.

Nor, in fact, was any formal decision ever arrived at; but on the first day of Michaelmas Term 1839 Wilde

[1] *Biographical Sketches*, 127. [2] Greville, 2nd ser. i. 58, 62.

moved in the Common Pleas that the practice of the Court should be restored to the *status quo ante mandatum*. Chief Justice Tindal, who had heard the arguments in the Privy Council, acquiesced, and the Serjeants maintained their monopoly till the Act 9 & 10 Vict. c. 54 threw open the Court, a result which might have been brought about by the exercise of a little judgment twelve years earlier.

At the General Election of January 1835 Wilde and Gladstone were returned for Newark without a contest,[1] presumably by amicable agreement between the parties. Once back in Parliament he lost no time in assailing the Government, and on April 2 he delivered a vigorous speech in favour of Lord John Russell's Irish Church motion. So vigorous, indeed, was his assault on the Ministers individually and collectively that he was called to order and forced to confine himself to the disposition of the surplus revenues of the Church of Ireland. Here he showed himself possessed of those limited views which were the stock-in-trade of the orthodox Whigs of that day, convinced, like King Canute, that they could say to the rising tide, 'Thus far and no farther.'[2]

[1] As to the reasons which led to the abandonment of a Tory seat Mr. Morley is silent. A similar arrangement was carried out in 1837.

[2] 'The moment he saw opinions advanced inconsistent with the interests of the Established Church, that moment he would oppose them. What he wanted was to purify the Church, and by doing so, more firmly to fix it in the affection of the public' (Hansard, xxvii. 673).

CHAPTER XX

LIFE OF LORD TRURO FROM HIS APPOINTMENT AS SOLICITOR-GENERAL TO HIS DEATH

1839–1855

In November 1839 the Solicitor-General, Sir Robert Rolfe, was made a baron of the Exchequer, and Wilde was appointed to succeed him, receiving the honour of knighthood on February 19, 1840. Of his claim to the post there could be no dispute ; as far back as November 1832 his name had been mentioned on a vacancy together with those of Campbell and Pepys[1] ; and Rolfe's elevation over him in 1834 was probably due to the defeat at Newark which had temporarily deprived him of a seat in Parliament.

Campbell's encomium on his subordinate is not marked by any great enthusiasm :

> I found Wilde a very honest, good-tempered and comfortable coadjutor, although I was obliged to answer many more of the Government cases than before.

Be this as it may, the Solicitor-General's time during the first months of his tenure of office was largely occupied with a case of great constitutional importance calling for all his vigour and industry.

In the year 1836 Messrs. Hansard, the printers of the House of Commons, had issued, by the order of the House, the reports of the Inspectors of Prisons.[2] In one of these it was mentioned that in Newgate a party of prisoners were found in possession of a certain physio-

[1] *Life of Lord Campbell*, ii. 18, 53.

[2] William Crawford, Esq., and the Rev. Whitworth Russell.

logical work, illustrated with anatomical plates, and 'published by Stockdale,' which the commissioners stigmatised as being 'obscene and indecent in the extreme.' Whereupon Mr. John Joseph Stockdale, whose reputation as the publisher of the 'Memoirs of Harriette Wilson' was none of the most savoury, brought an action for libel against Messrs. Hansard. Campbell, who appeared for the defendants, relied upon a plea of justification that the book *was* obscene, contending at the same time that the authority of the House of Commons was, in any event, a defence.

The jury found in his favour on the former point, without touching the question of privilege. But Lord Denman, who was sitting at Nisi Prius, and who, as a rule, was most chary of enunciating general propositions of law, took occasion to declare that 'the fact of the House having directed Messrs. Hansard to publish all their parliamentary reports is no justification for them or any other bookseller who publishes a particular report containing a libel against any man.'[1] This attempt to make Parliament responsible as a private libeller if in the course of discharging its duties it published anything annoying to the feelings or injurious to the pocket[2] was received with astonishment and indignation by the Commons. And on the initiative of the Attorney-General a select committee was appointed, February 16, 1837, to examine with respect to the circulation and publication of papers printed by order of the House. The report of this body, presented on May 8, was chiefly the work of Serjeant Wilde, and the offended House after due deliberation declared that the power of publishing such of its reports, votes and proceedings as it shall deem necessary or conducive to the public interests is an incident essential to the constitutional functions of Parliament. It was further resolved that for any person to institute a suit in order to call its privileges in question or for any Court to decide

[1] *State Trials*, N.S. iii. 723, 733.
[2] Erskine May, *Constitutional History*, ii. 78.

upon matters of privilege inconsistent with the determination of either House was a breach of privilege.

Stockdale was as keen a litigant as the late Mr. Bradlaugh, and within a few days of the Commons' resolution he had launched another action. The Attorney-General was confident that Denman's hasty dictum would not be upheld by his puisne judges, Littledale, Patteson, Coleridge, all of them first-rate lawyers[1]; and on his advice the House directed the Hansards to enter an appearance and plead 'the previous order and authority of the House of Commons.' To this plea the plaintiffs demurred, and the demurrer was argued in April and May 1839, the delay being due, as Campbell declares, with a kick at his adversaries, to the congested state of business in the Queen's Bench.

Campbell argued for sixteen hours, but the Court was unanimous against him, and on May 31 its members delivered seriatim what he regarded as an ill-considered and intemperate judgment,[2] declaring that they had jurisdiction to enquire into the existence and extent of the privilege claimed in the Plea, that they were not concluded in their enquiry by the resolution of the House, and that the privileges of the House did not authorise the publication of the libel to any but its own members.[3]

'Then,' as the magistrate says in Mr. Pinero's play, 'the fun began.' To have brought a writ of error would have subjected the rights of the House of Commons to the decision of the House of Lords; to establish their privilege by legislation would be a tacit acceptance of the judgment of the King's Bench. Another select committee was appointed to enquire into the whole case of Stockdale *v.* Hansard, and it was resolved to stop any further legal proceedings in a summary manner. Meanwhile the undismayed Stockdale brought action after

[1] *Life of Campbell*, ii. 99.
[2] *Ibid.* ii. 113, but see *Life of Denman*, ii. 125.
[3] Anson, *Law and Custom of the Constitution*, i. 161–3.

action, and recovered a large sum of damages, which the Sheriffs of Middlesex levied; and, when ordered by the House to restore the moneys, they objected that they were bound by the orders of the Queen's Bench. During the early months of 1840 the Sheriffs were taken into custody by the Serjeant-at-Arms, and Stockdale, his son, his attorney, and the attorney's son and clerk, were all committed to Newgate. It only remained to commit Lord Denman and his colleagues, nor would such a course have been without precedent.[1]

Fortunately reason and common sense prevented so outrageous an abuse. Campbell, who had done a good deal towards fanning the flames, was now seriously alarmed, and by the Printed Papers Act [2] it was provided that such actions as those of Stockdale should be stayed on the production of a certificate or affidavit that any paper the subject of an action was printed by order of either House of Parliament.

This pacific solution was most distasteful to Wilde, now Solicitor-General, who from first to last had been the life and soul of the party of privilege. He had thrown himself with all his keenness into the preparation of the original report; he had worked for the House of Commons as ardently as for a private client, and he had returned old briefs and refused to accept new ones at a sacrifice of many hundreds of guineas. He was fully persuaded that the Queen's Bench had been wrong, to a man of his temperament it seemed perversely wrong, in their judgment. And at one moment he had striven to precipitate a crisis by advising, as Solicitor-General, that no return should be made by the Serjeant-at-Arms to the writ of Habeas Corpus, which commanded him to produce the Sheriffs of Middlesex before the Court. His speech on June 17, 1839,[3] had been the clearest and the strongest vindication of the action of the House. He saw clearly that the Printed Papers Bill for all practical

[1] Jay *v.* Topham, 1689. *Commons Journals*, x. 227.
[2] 3 & 4 Vict. c. 9.
[3] Hansard, xlviii. 377.

purposes affirmed the judgment of the Queen's Bench, and 'more mindful of his zeal for the House than of his allegiance to the Government,'[1] he threw every possible obstacle in its way.

The Bill received the Royal Assent on April 16, 1840, and, pertinacious to the end, the Solicitor-General declared that the Lords' amendments made it tenfold more objectionable than it was on leaving the Lower House, and that the decision of the Queen's Bench was inconsistent with a higher stream of authority than any to which a judicial body had ever before opposed itself. The sight of the law officers at variance was as unusual as it was unedifying; but Campbell, while holding that Wilde 'was always for pushing privilege to a mad extreme,' does not express any rancour.

Shortly after his appointment the Solicitor-General had been approached by the Incorporated Law Society on a matter affecting both branches of the profession. The removal of the Law Courts from Westminster to the Strand, which has been accomplished under the eyes of the present or perhaps I should say of the last generation, was already being mooted, and Wilde was induced to move for a committee of the House of Commons to enquire into the project; the committee was granted, and he was made chairman.

The retention of the Courts amid their immemorial but intensely inconvenient surroundings was largely a matter of sentiment, and many, both among the members of the committee and the witnesses, were averse from the necessary destruction of the associations connected with Westminster Hall. Mr. Erle, afterwards Chief Justice of the Common Pleas, declared, however, that for his part he was not aware of any motive for professional exertion being derived from these associations. 'Do you usually find,' interposed Wilde, 'that the most successful barristers are men of the greatest taste?' 'If I wished well to a student at law,' was the answer, 'I should discourage

[1] Denman, ii. 69.

the species of interest which has been alluded to.' Truly the law is a jealous mistress.

At last the incessant labour of years and the added weight of office were beginning to tell, and Wilde's medical advisers urged his retirement from the Bar to an easier sphere. Early in 1841 a puisne judgeship fell vacant for which the Solicitor-General was induced to apply. He had given an intimation of his intention to the Chancellor some little time previously, but when the actual moment came Lord Cottenham was *hors de combat* from illness, and he was compelled to approach the Prime Minister directly. The Melbourne Ministry was, at this date, almost in the last extremity, and Wilde's re-election on taking office had been carried against Mr. Frederick Thesiger[1] by the narrow margin of only five votes. Upon his entering the Prime Minister's room Lord Melbourne said abruptly,

> Of course you must have the judgeship, but there is an end of the Government, for nobody else can carry Newark, and whether Erle or Talfourd succeed you, we lose another seat which, with our present majority of four or five, will be fatal.

Wilde saw at a glance both the position of the Ministry if he took a judgeship, and the consequences of it being known that he was refused one for fear of a by-election. Without the slightest hesitation he protested that he came on no such errand as was supposed, and that he intended to remain a law officer of the Crown. It was an act of rare loyalty and delicacy, and Melbourne might well have refused to accept the sacrifice. But, like many another Prime Minister, he felt that his services were indispensable to his country, and contented himself with observing to a friend, 'This is about the most painful thing I have ever endured; office is not worth having at such a price.'[2] One would have thought the remedy was in his own hands.

[1] Afterwards Lord Chelmsford.

[2] *Law Review*, xxiii. 355.

In the following June, Wilde succeeded Campbell as Attorney-General on the latter's appointment as Chancellor of Ireland. Parliament was dissolved almost immediately. Well assured that his return for Newark was hopeless, and extremely dissatisfied by certain illegal payments which had been incurred on his behalf at the last contest, he accepted an invitation from the city of Worcester, where he headed the poll. The Government resigned in July, and Wilde was once more at liberty to resume to its full extent his private practice at the Bar.

He had, of course, given up Circuit on his appointment as Solicitor-General, but, like Mr. Erskine in the 'Anti-Jacobin,' he found himself 'called by special retainers during the summer into many different and distant parts of the country, travelling chiefly in post-chaises.'[1] His only real rival after the elevation of Pollock to the Bench in 1844 was Follett, now in his turn trammelled by office, and with the shadow of an early death already creeping over him. In the Pleas he was supreme, and he had the choice of the best work in the other Courts of law as well as in the House of Lords. Before this latter tribunal he was chosen to represent Daniel O'Connell in the proceedings on Writ of Error,[2] a choice which indicated his position at the Bar as unmistakably as the selection of Sir Charles Russell to act for the principal defendant in the Parnell Commission. As to how far the quashing of the indictment was due to his learned argument, and how far to the political leanings of the majority of the Court, I advance no opinion.

A few months earlier Sir Thomas had been engaged before the Lords' Committee for Privileges in a case which exercised a romantic influence over the remainder of his life.[3]

[1] See 'Meeting of the Friends of Freedom,' *Works of Hookham Frere*, ii. 72.

[2] *Vide supra*, 144.

[3] Sussex Peerage Claim, 11 Clark and Finnelly, 85, *State Trials*, N.S. vi. 79.

On April 8, 1793, Augustus Frederick, Duke of Sussex, the sixth son of George III., had been secretly married in Rome by an English clergyman, with the rites of the Church of England, to Lady Augusta Murray, daughter of the Earl and Countess of Dunmore. And on their return to England in the autumn of the same year the marriage was solemnised a second time, after publication of banns, in St. George's, Hanover Square.[1] In the following January the news came to the ears of the King, who took immediate steps to have the ceremony declared void under the Royal Marriage Act.[2] For a considerable time the Prince refused to acquiesce in the decision of the Court, but events were too strong for him, and in 1809 he even applied for the custody of his children on the ground that their mother was bringing them up in the idea that they were prince and princess.[3] These innocent victims of the law had been given the surname of D'Este, from which Royal house both their father and

[1] 'It seemed singular that banns should be published, where one of the parties was of the Royal Family, and that the clergyman publishing the banns should not be struck upon the reading of the name; it appeared, however, that in the parish there were many of the name (I think Augustus Frederick) by which he was called in the publication. Then, great blame was imputed to the rector for publishing the banns without enquiry as to the residence of the parties in the parish, and without their knowing the parties. The rector first appeared; he said he had two most respectable curates, and he had always most solemnly enjoined them not to marry parties without having first enquired about their residence. The curates were then examined, and they said theirs was a most respectable parish clerk, who wore a gown, and they had always most solemnly given a like injunction to him. The clerk was then called, and he declared that no man in the parish had a more excellent careful wife than he had, and that he daily gave her most solemnly a like injunction. She then made her appearance, and said she must sometimes be about her own, and not about parish business; but that she had two female servants, as discreet as any in the parish, and she had always given them a like solemn injunction, when anybody brought a paper about publication of banns in her and her husband's absence, to make proper enquiries about the parties' residence' (Twiss, *Life of Lord Eldon*, i. 235).

[2] Heseltine *v.* Lady Augusta Murray, 2 Addams, *Ecclesiastical Reports*, 400 *n.*

[3] *Dict. of Nat. Biog.* ii. 257, and references there cited.

mother claimed to be descended, and the son made a series of determined efforts to vindicate his legitimacy, even filing a bill in Chancery, though without success, to prove the marriage of his parents good and valid.

The Duke of Sussex died in 1843 and Sir Augustus d'Este [1] promptly petitioned the Crown, claiming his father's dignities. On the advice of the Attorney-General the petition was referred to the House of Lords, and the Committee for Privileges, consisting of Lords Lyndhurst, Brougham, Denman, Cottenham, Campbell and Langdale, sat to hear it, with Lord Shaftesbury,[2] in the chair, and the judges in attendance. Sir Thomas Wilde, who appeared for the petitioner, had much sympathy on his side. The Attorney-General admitted that both the Duke and Lady Augusta had considered themselves to stand in the relation of husband and wife; and the learned and noble members of the committee found for the validity of the marriage, *lege loci contractûs*, a conclusion to which they were brought by the evidence of Bishop Wiseman, accepted as *peritus virtute officii*. But Wilde's utmost efforts were unable to get over the Royal Marriage Act, and it was resolved by the committee that the petitioner had not made out his claim.[3]

He was successful, however, in another and an unlooked-for quarter. His unremitting efforts had won the heart of his client's sister, who was equally interested with her brother in the establishment of his legitimacy. Wilde had been a widower for some years,[4] and on August 14, 1845, he married the Lady Augusta d'Este, a nine days'

[1] He was a knight of the Hanoverian Order.

[2] The father of the philanthropist.

[3] The only really arguable point was that the statute did not apply to marriages contracted out of the kingdom. The contention failed, but, on the other hand, nothing in the Royal Marriage Act applied to the succession to the kingdom of Hanover, and had there been no heir male to Ernest Duke of Cumberland, Sir Augustus d'Este, however illegitimate by the laws of England, would have sat on the Hanoverian throne.

[4] His first wife, daughter of William Wileman and widow of William Devaynes, had died in 1840.

wonder which gave occasion for a not very felicitous epigram :

Happy the pair who fondly sigh,
By fancy and by love beguiled ;
He views as heaven his d'Este nigh,
She vows her fate will make her Wilde.

It was a remarkable union, the son of an attorney and the granddaughter of a king, but the ten years during which it lasted brought great happiness to both husband and wife. Lady Augusta was a woman in whom force of character was allied to tact : she would not waive her rights of blood, but she was always ready to fall in with any little stratagems which might rob their assertion of inconvenience. There were clumsy jokes about 'Tom, the Queen's cousin,'[1] and Brougham, in moments of ill temper, would declare that 'Jonathan Wilde had become a courtier.'[2] But the kindness of heart of the second Lady Wilde, her ready acceptance of her husband's old friends, and the zest with which she threw herself into his generous hospitalities, made her a universal favourite and were of no small assistance to him in the high office which he was so soon to be called upon to fill.

During Sir Robert Peel's second administration Wilde, as became an ex-law officer, took an active part in the House of Commons, and strengthened his position as a ready and useful debater. He rendered especial service by his advocacy of the penny postage, with which the name of Sir Rowland Hill will always be associated. On June 27, 1843, he moved for a select committee on Hill's recommendations, and he was largely instrumental in forcing their acceptance upon a sceptical Government. Towards the close of the Tory administration the illness of his rival and friend Sir William Follett gave him the opportunity for a kindly and generous act. The elevation of Pollock to the post of Chief Baron had made Sir Frederick Thesiger Solicitor-General at a moment

[1] *Life of Lord Coleridge*, i. 175.
[2] Campbell's *Life of Brougham*, 571.

when Follett was utterly unable to discharge his official duties. The private relations between Wilde and Thesiger had been strained severely during the Newark contest, but this did not prevent the former from volunteering to place his experience and his assistance at the disposal of his adversary in all the business of the law officers which did not trench upon politics.

When the Whigs resumed office in 1846 he was appointed Attorney-General as a matter of course. Within the week the Chief Justice of the Common Pleas, Sir Nicholas Tindal, died after a few days' illness, and Wilde, equally as a matter of course, succeeded him on July 6.[1] Called to preside in his own special Court, he brought to the task an unexpected suavity of manner and a complete mastery of the practice:

> His judicial character fully sustained his legal reputation; his innate love of justice never slept; his strenuous pursuit of it never halted; his patience was inexhaustible; his legal stores profound and ready for use; his experience extensive; and his impartiality free from all taint of suspicion.[2]

The latter quality was especially remarkable in his treatment of counsel:

> All were put precisely on the same footing before him, except that perhaps, to avoid anything like a bias, and to guard himself from the least deference towards one rather than another, he might lean against men of great weight and authority in the profession, especially if they appeared to presume on it.[3]

Yet Sir Thomas Wilde will not take rank among the great judges:

> His mind, wrote Sir John Taylor Coleridge,[4] was so intensely fixed on details at the age when our faculties are most

[1] The Chief Justiceship of the Pleas was the especial perquisite of the Attorney-General.

[2] *Law Magazine* and *Law Review*, iv. 22.

[3] *Law Review*, xxiii. 358.

[4] Quoted by Bennett, *Biographical Sketches*, 148.

expansive and supple, that he had not afterwards the full power of embracing the entirety of a great subject, which even at the Bar was often required of him, and which his station made afterwards indispensable to perfect success. It was his misfortune, adds the same authority, to have practised as an attorney so long as he did; no doubt it conduced in many ways to his early and great success, but it prejudiced him when that success was attained.

Nor did Wilde's discursive habits forsake him on the bench; and on one occasion in Banc Mr. Justice Maule, in following his chief, began his judgment by remarking caustically that the question of what the law *ought* to be had now been amply discussed; he should therefore for his part proceed to consider what it really *was*.

The most important case, outside the Court of Common Pleas, with which his name is associated during these years was the trial of Ernest Jones and five other Chartists at the Old Bailey in July 1848.[1] The prisoners were charged with sedition, unlawful assembly and riot, Jones being defended with more vigour than discretion by Wilde's old Newark supporter, Serjeant Wilkins, now a brother of the coif. They were all convicted, and the sentences did not err on the side of leniency. The Chief Justice tried them with dignity and humanity, but allowed himself to be entangled in a discussion on political economy with Ernest Jones for which his habits of mind and study had indifferently qualified him.

The resignation of Lord Cottenham in May 1850 seemed to have the very remotest connection with the fortunes of the Chief Justice of the Common Pleas. But the Government were in a great dilemma: they had no qualified candidate for the Great Seal among their law officers, and Langdale firmly declined it when pressed upon him by Lord John Russell. Recourse was had to the old Whig panacea, and Lords Commissioners were appointed, the Master of the Rolls, Vice-Chancellor Shadwell and Baron Rolfe. The expedient was even less successful

[1] *State Trials*, N.S. vi. 723 *et seq.*

than in 1835, and an outcry arose, alike from the Bar and the general public, which was scarcely stilled by the announcement of 'Wilde's astonishing appointment' as Chancellor.[1] In despair the Government had resorted to their old Attorney-General. Rolfe's claims were considered, but the parliamentary situation demanded a man of stiffer fibre, and the lot fell upon Wilde, who was duly sworn on July 15, taking his seat as Baron Truro of Bowes in Middlesex. Shortly after his appointment he received an address from over five hundred of the leading attorneys and solicitors in the country, congratulating him on his elevation, and thanking him for his unvarying courtesy and consideration to members of his old branch of the profession. It was no small gratification for him to reply that, as exemplified by his own career, the humblest member upon the roll of attorneys was not excluded from the highest honours of the State.[2]

It required nerve and courage to abandon, at the age of sixty-eight, the soft familiar 'pillow of the Pleas' and to undertake the duties of an Equity judge. Wilde's acquaintance with the practice and procedure of the Chancery Courts was elementary, and the Chancery Bar made no secret of their apprehensions. Partly to allay the outcry, and partly as a *ballon d'essai*, a semi-inspired announcement went the round of the Press to the effect that Lord Truro was only temporarily appointed until pending arrangements for dissevering the judicial from the political functions of that office should be complete. A revival of the scheme of 1836 was alleged to be in contemplation: Lord Truro, under the title of Lord Keeper, was to sit in the Cabinet and preside over the appellate jurisdiction of the House of Lords, while Rolfe succeeded to the presidency of the Chancery Courts and to the

[1] *Life of Lord Denman*, ii. 13.

[2] Lord Macclesfield is the only other Chancellor who served the same apprenticeship as Lord Truro. At the request of the deputation, the latter sat for the portrait which is now in the rooms of the Incorporated Law Society.

ecclesiastical and legal patronage hitherto attached to the Great Seal.

Indeed, the existence in its full integrity of the historical office of Lord Chancellor was never in greater peril. The prolonged illness of Lord Cottenham and the habits of procrastination which he developed during his later days had once more piled up the arrears in Chancery. The issuing of new Orders, the increase in the judicial staff, even the abolition of the Six Clerks' Office, had been powerless to cope with the evil. Never had the public mind been more inflamed;[1] a competent observer declared that the most popular measure which could be introduced into the House of Commons would be one for the abolition *sans phrase* of the Court of Chancery; and the same authority expressed his belief that a determined effort would have swept it away as the Palace Court disappeared under the strokes of Jacob Omnium.

Reform, however, was at hand, though not on the lines projected by Cottenham and Melbourne, or through the scheme so carefully worked out by Langdale. Lord Truro's tenure of the Great Seal was marked by a measure 'to improve the administration of justice in the Court of Chancery' which made little noise and became law almost without discussion.[2] Under Lord Cottenham, who in his second chancellorship had declined to hear original causes, the Chancellor's Court had become little more than a court of appeal from the Master of the Rolls and the Vice-Chancellors. The new Act gave statutory sanction to the practice, and associated with the holder of the Great Seal two 'Lords Justices' who were authorised to exercise the same judicial powers as the Lord Chancellor, either jointly with him or in his absence. At a single stroke the Gordian knot was cut. No more was heard of a minister of justice, or of a 'chief judge in Chancery.' The Chancellor was set free to attend to his duties in the House of Lords, and as a minister of State, without

[1] The first number of *Bleak House* appeared in March 1852.

[2] 14 & 15 Vict. c. 83.

interruption to the business of his Court. And this was effected without impairing the dignity of the office and without divorcing the holder of the Great Seal from his connection with the practical administration of justice.

Another measure of scarcely less importance for which Lord Truro was responsible gave the Equity judges of first instance a freedom and a facility to which they had hitherto been strangers. By an Act 'to make provision for the more speedy and efficient despatch of business in the Court of Chancery'[1] the jurisdiction of the twelve Masters in Chancery was swept away and the modern system of judges' chambers called into existence. Henceforward the Master of the Rolls and the Vice-Chancellors were required to carry their own orders into execution so far as such labours had hitherto been thrown upon the Masters, and for that purpose they were provided with chambers and with a staff of competent clerks. To make the judges work out their own decrees had long been a main object with Chancery reformers, and as far back as 1840 Mr. Pemberton Leigh had drawn a graphic description of the habits and customs of the Masters:

> secluded in the recesses of their dark chambers, exempt from the control or inspection of the judges, relieved from the competition of the Bar, independent of the opinion of the solicitors and their proceedings totally unknown to the public, acquiring no credit by diligence or ability, incurring neither loss nor censure by indolence or inattention, with nothing to hope and nothing to fear.[2]

[1] 15 & 16 Vict. c. 80. See also c. 86 and c. 87. These measures were actually passed in the Chancellorship of Lord St. Leonards, but they were the fruit of a committee to enquire into the 'jurisdiction, pleading and practice of the Court of Chancery,' which Lord Truro had appointed. He had given orders before his resignation for the preparation of Bills to carry out their recommendations, and he did his utmost to smooth their passage through Parliament in the consulship of his successor.

[2] Hansard, lv. 1322. 'Nothing,' he added, 'can be done effectually to expedite the Court of Chancery till a complete alteration is made in the whole system of the Masters' office.'

The Chancellor, swayed by the memory of the old attorney days when he himself must have spent many a weary hour in the Master's office, was opposed to its abolition, just as Cottenham had been from blind devotion to the system in which he had been reared. When once it was recommended by his own commission Lord Truro loyally accepted the situation, but from sentiment, if for no other reason, he would have welcomed the recent Order by which the ancient title of Master has been conferred upon the Chief Clerks.[1] He was also the author of an important mitigation in the lot of the suitors in Chancery. On taking office he discovered that the fees paid by them averaged 179,000*l.* per annum, collected by ninety different officers, over not one of whom was there any check. In a few months he had, *mero motu*, reduced this amount by 20,000*l.*; and he was responsible for the Suitors' Relief Act, which abolished a whole nest of Chancery sinecures and introduced the use of stamps for collecting the fees required for the maintenance of the Courts. But even greater is the debt which posterity owes him for his warm support of the Common Law Procedure Act.[2] With it disappeared the worst technicalities which generations of special pleaders, and of 'Surrebutters' on the Bench, had accumulated round the fabric of an action at law. It is strange that a judge who showed himself so wide-minded in many ways as did Lord Truro, should have been bitterly opposed to the Bill for rendering the parties to an action permissible witnesses. He even made a personal appeal to Lord Lyndhurst against a measure which in his opinion could only open the flood gates of perjury.

[1] This change was inaugurated in 1897. Much of the dislike entertained by the old Chancery judges for the sittings in chambers arose out of a morbid fear of losing their dignity by close contact under circumstances of modified formality with solicitors and their clerks; in short, of being hustled. The Common Law Chambers had long acquired for this very reason the reputation of a mere bear garden.

[2] 15 & 16 Vict. c. 71. It carried out the recommendations of a commission of Lord Cottenham's.

In the Court of Chancery he soon allayed the fears with which his appointment had been received. His tenure of office only lasted for a year and seven months, and during the latter part of that time he had the invaluable assistance of Knight Bruce and Rolfe (now Baron Cranworth), the first Lords Justices. But when sitting alone for appeals and re-hearings his patience and courtesy, and his independence of mind, gave him the confidence of all who practised before him. To a man equally conscientious and industrious it would have been intolerable to sit and administer a system which he had not mastered; and by labour almost incredible for one of his age he acquired enough of the science and practice of Equity to leave the reputation of a sound judge. About 130 of his decisions have been reported;[1] in the majority of the cases he reversed the decrees of the Court below; in only one was his own ruling appealed from, and then he was affirmed by the House of Lords. Yet he never felt sufficient confidence in himself to deliver his decision extempore. The labour of writing his judgments was intense and caused a certain amount of delay, but when he resigned only seven remained undelivered. A similar diffidence in his own powers led him to depute to Brougham, at the latter's request, the hearing of Scotch appeals in the House of Lords, an arrangement which gave Brougham greater prominence than his brother law lords approved of; and Lord Truro was persuaded to take his proper place in that assembly. What is generally regarded as his best judgment, that in the Braintree Church Rate case,[2] was delivered from the Woolsack.

His exercise of patronage won the complete approval of the profession. We have seen that Knight Bruce and Cranworth were the first Lords Justices. Cranworth he had previously induced to exchange the position of

[1] See 3 Macnaghten and Gordon, 1 De Gex, Macnaghten and Gordon.

[2] Gosling *v.* Veley, 4 House of Lords Cases, 771.

Baron of the Exchequer for that of Vice-Chancellor. The other Vice-Chancellors appointed by him were Parker, Kindersley, and Turner,[1] the latter of whom eventually succeeded Lord Cranworth as Lord Justice. On the Common Law side Baron Martin and Mr. Justice Crompton were admirable appointments.

The livings in his gift were filled up with a care which created a mild sensation, and he had a genuine gift for detecting merit among the Evangelical clergy; the late Canon Cadman, and Robert Bickersteth, afterwards Bishop of Ripon, were among those on whom he bestowed preferment. Learning that a son of Robert Southey had received no recognition from the party which his father had served so doughtily, and was in distressed circumstances, he gave him what in these days would be considered a good living, and insisted on defraying all the legal charges out of his own pocket. The favour was conferred with a scrupulous consideration that impresses one with a sense of the kindness and real delicacy of the Lord Chancellor, and Lord Selborne speaks of his 'hospitality and affability' as qualities to which the Chancery Bar had not been much accustomed.[2]

His public life may be said to have closed with the fall of Lord John Russell in February 1852. For some little time to come he assisted in the passage of legal bills through the Upper House and took his share of the appellate work. In the following year, when Lord Aberdeen made up the Coalition Government, Lord Truro was not invited to join it; his health was failing—largely in consequence of his exertions as Chancellor—and he had hardly fulfilled the expectations that had been formed of him as a power in debate. Lord Cranworth, whom he had so strikingly caught up and distanced, was now preferred to the vacant post. In the course of 1853 Lord Truro ceased his attendance in the House of Lords,

[1] According to Campbell, Lord Truro incurred the deep resentment of Brougham by refusing to make his brother William a vice-chancellor.

[2] *Memorials, Family and Personal*, ii. 130.

and after two years of great suffering, borne with a corresponding fortitude, he died in his house in Eaton Square on November 11, 1855: he was buried in the Dunmore vault, in the churchyard of St. Lawrence, near Ramsgate, the family burying-place of Lady Truro's maternal grandparents. He left no children to perpetuate the line of the Duke of Sussex, but a family by his first wife have preserved the Truro title. His widow survived him for many years, and in 1856 made a present of his valuable law library to the House of Lords, a gift which was acknowledged by Lyndhurst, Brougham and others, in speeches worthy of the occasion and of their old friend and rival at the Bar and in Parliament.[1] The roll of the Chancellors of England contains more illustrious names, but none that recalls a more honourable career or a finer character than that of Thomas Wilde.

[1] Hansard, cxli. 127.

INDEX

ABBOTT, CHARLES, Lord Chief Justice, afterwards Lord Tenterden, 232 *n.*; 241, 418
Abinger, Lord Chief Baron. *See* Scarlett, Sir James
'Absolute Wisdom,' 232, 423
Adam, Dr. Alexander, 170
Adelaide, her Majesty Queen, 98, 337, 345, 359
Albemarle, George Thomas Keppel, sixth Earl of, 25 *n.*; 52, 241 *n.*; 244 *n.*
'Albert Lunel,' 357
Alexander, Sir William, Chief Baron, 81
Althorp, Viscount, afterwards third Earl Spencer, introduces Small Debts Bill, 108; leader of the House of Commons, 289, 290, 324, 329–330; letter of expostulation to Brougham, 331; his feelings on Brougham's exclusion from office, 343, 352; his friendship with Lord Cottenham, 382, 390
Arnold, Dr. Thomas, 355
Auchterarder case, the, 408
'Austin, Billy,' 219, 253
Austin, Charles, 119, 435

BAGEHOT, WALTER, on Lyndhurst, 1, 26, 143, 159; on Brougham, 377
Bankes, William John, 40, 273
Bankruptcy Act, 310
Barham, Rev. R. H., 279 *n.*
Baring, Alexander, 95, 197
Barnes, Thomas, editor of the 'Times,' 110, 327, 355
Beaconsfield, Earl of. *See* Disraeli
Beaufort, Duke of, 115
Bedford, Duke of, 80, 188, 197
Bennet, Hon. H. G., 33, 206
Bennett, W. H., 7 *n.*; 13, 74 *n.*; 418, 428, 435
Bentinck, Lord George, 111, 149, 151 *n.*
Bergami, Bartolomeo, 228, 233, and *n.*; 243, 245, 252, 257
Berry, Miss, 222 *n.*; 228, 251
Berryer, M., 37 *n.*; 375
Best, Sir William Draper, Chief Justice of the Common Pleas. *See* Lord Wynford
Bickersteth, Henry. *See* Lord Langdale
Bickersteth, Rev. Robert, 454
Bill of Pains and Penalties, 237, 240 *et seq.*
Bon Gaultier Ballads, 156 *n.*; 334 *n.*
Bosanquet, Sir John Bernard, 342
Bovill *v.* Moore, 14
Brandreth, Jeremiah, 21
Bridgewater case, the, 117 *n.*; 158
Brougham, Henry Peter, Lord Brougham and Vaux; birth and family, 168, 169; education at Edinburgh High School and University, 170; contributions to the Royal Society, 171; studies for the Scotch Bar, 173; tour in the Hebrides and on the Continent, 174, 175; goes circuit, 176; publishes 'Inquiry into Colonial Policy,' *ib.*; one of the founders of the 'Edinburgh Review,' 177; leaves Scotland and enters at Lincoln's Inn, 179; member of the Academical Society, 10; goes on mission to Spain, 181; reads law with Tindal, 183; opposes the Orders in Council, 184, 195; called to the English Bar, 186; friendship with Lord

Grey, 187, 190 and *passim*; enters Parliament as Member for Camelford, 188; his defects as an advocate, 191; defends the Hunts, 192, 194; Liverpool election, 198; temporary exclusion from Parliament, 199; appears in the Cochrane case, 200; his attitude during the Peninsular War, 202; elected M.P. for Winchelsea, 203; his vigour in opposition, 204 *et seq.*; denounces the United Service Club, 206; obtains committee on the state of education of the lower orders, 207; roving enquiry into charitable trusts, 209; unsuccessfully contests Westmorland, 212; is consulted by the Princess of Wales, 222 *et seq.*; induces Princess Charlotte to return to her father, 225; tries to dissuade Princess of Wales from going abroad, 227; is appointed Attorney-General to the Queen on Caroline's accession, 232; meets her at St. Omer, 233; fails to keep her out of England, 234; resists the appointment of a committee of enquiry into her conduct, 235; defends her against the Bill of Pains and Penalties, 242 *et seq.*; anger at Wilde being briefed, 423; falls foul of Copley, 35 *n.*; offends George IV., 255; his treatment of the case, 260; tries to dissuade the Queen from going to the Abbey, 262; forms part of her funeral procession, *ib.*; appears in the case of Ambrose Williams and the Durham clergy, 265; is refused a silk gown by Eldon, 266; introduces Education Bill, 269; reflections on Lord Londonderry's death, 271; expectations of office, 272; fracas with Canning in the House, 273; incurs resentment of Byron, 274; assails the Holy Alliance, 275; takes up the cause of 'Missionary' Smith, *ib.*; 'the schoolmaster is abroad,' 277; helps to establish the London Mechanics' Institute and the Society for the Diffusion of Useful Knowledge, *ib.*; his share in the foundation of London University, 278–9; supports Canning's ministry, 280; Lord Grey breaks off relations with him, 281; presses claims of Macaulay on Lyndhurst, 59; receives a silk gown from Lyndhurst, 58, 282; his progress on circuit, 283; speech on the defects of the law, 284; is reconciled with Lord Grey, 282; exchanges Winchelsea for Knaresborough, 285; elected for Yorkshire, 287; gives notice of motion for Parliamentary Reform, 288; refuses to become Attorney-General, 290; is made Chancellor, *ib.*; takes title of Brougham and Vaux, 293; his work in Chancery, 294 *et seq.*, 305, 317, 319; perpetual conflicts with the Peers, 297; 'forces the King's guard,' 300; his version of the dissolution of Parliament by William IV. in April 1831, 303; speech on second reading of the Reform Bill, 306; carries Bankruptcy Act, 310; resigns with Lord Grey in May 1832, 311; his comments on that crisis, 91; at the height of his fame, 313; establishes Judicial Committee of the Privy Council, 315, 361; throws open the Court of Common Pleas, 316, 420, 434; rebuked by Bickersteth, 321 his demeanour in society, 322 *et seq.*; his treatment of Sir William Horne, 316, 391; fails to carry the Local Courts Bill, 102, 316; exerts himself to keep the Reform Ministry together, 325; quarrels with the 'Times,' 327; his 'delusions,' *ib.*; his intrigue with Lord Wellesley causes resignation of Lord Grey, 329 *et seq.*; contributes to formation of Melbourne Ministry, 333; indiscretions of his journey to Scotland, 334; attends the Grey banquet, 336; growing unpopularity, 337; betrays dismissal of Lord Melbourne to the 'Times,' 338; surrenders the seals, *ib.*; offers to become Chief Baron, 339; discovers Cannes, 340 *n.*; introduces Municipal Corporations Bill,

118, 343 ; excluded from office on return of the Whigs, 343, 344 ; his health temporarily affected thereby, 345 ; returns to public life and attacks Melbourne's government, 348 ; carries the 'Canada Government Act Declaratory Bill,' 350 ; unfounded rumour of his death, 353 ; translates the 'De Corona,' 170, 355 ; his literary activity, 356 ; reconciled with Melbourne, 359 ; his defects as a legislator, 366 ; applies to be naturalised in France, 369 ; criticism on Campbell's 'Lives of the Chancellors,' 155 ; reads a paper at the French Institute, 371 ; patron of the Social Science Congress, 372 ; speech at the dinner to Berryer, 375 ; mental failure and death, 376
Brougham, James, 302, 347
Brougham, John, 374 *n.*
Brougham, Lady, 238 and *n.* ; 346, 376
Brougham, Miss, 347
Brougham, Mrs., mother of Lord Brougham, 169, 291, 347
Brougham, William, 347, 374, 403, 454 *n.*
Buchan, Lord, 168, 179
Burdett, Sir Francis, 45, 61, 98, 302
Burney, Miss Fanny, 379, 380 *n.*
Byron, Lord, 178, 245 *n.* ; 274 and *n.*

Calcraft, Right Hon. John, 87 *n.*, 206
Cambridge, Duke of, 354
Campbell, John, Lord, account of Lyndhurst at Tidd's chambers, 10 ; early acquaintance with Lyndhurst, 24 ; garbled version of Lyndhurst's speeches, 28 *n.* ; on Lyndhurst in House of Commons, 30 ; on Lyndhurst as Master of the Rolls, 40 ; on Lady Lyndhurst, 53 ; receives silk gown from Lyndhurst, 57 ; on Lyndhurst as Chief Baron, 83 ; attacks Lyndhurst in House of Lords, 154, 165 ; exchanges hospitality with him, 155, 158, 166 ; Life of Lyndhurst, 166 ; on Brougham and the 'Edinburgh Review,' 177 *n.* ; description of Brougham, 181 ; on Brougham as an advocate, 191 ; blunders over Lord Ellenborough, 232 ; on Brougham at the Queen's trial, 243 ; comparison of Brougham and Scarlett, 283 ; on Brougham in Privy Council, 320 ; on Brougham in crisis of July 1834, 333 ; on Brougham at the Grey festival, 336 ; Brougham's opinion of, 360 ; appointed Lord Chief Justice, 365 ; Chancellor, 165 ; visits Brougham Hall, 368 ; early recollections of Cottenham, 384 ; anger at Cottenham's appointment to the Rolls, 392 ; on Cottenham's legal attainments, 399, 412 ; on Wilde's industry, 420 ; conduct in Stockdale *v.* Hansard, 438
Campbell, Thomas, 278
Canning, the Right Hon. George, 46 *et seq.* ; 50 *n.* ; 55, 210, 218, 273
Caroline, her Majesty Queen, birth, education and characteristics, 214 *et seq.* ; marriage, 217 ; the 'Delicate Investigation,' 219 ; places her affairs in the hands of Brougham, 222 ; goes abroad, 227 ; indiscreet behaviour on the Continent, 227 ; returns to England, 231 ; proceedings against, in Parliament, 241 *et seq.* ; death, 262
Castle, the spy, 18
Castlereagh, Viscount, 25, 32, 196, 210, 235 ; death, 271 and *n.*
Catholic Emancipation, 45, 61, 64
Chancery Reform, 68, 141, 395 *et seq.* ; 407, 450 *et seq.*
Charlotte, Princess, birth of, 218 ; childhood, 222 ; consults Brougham, *ib.* ; breaks off her engagement with Prince of Orange, 224 ; flies to her mother's house, 225 ; death, 226
Charlotte, Queen, 224
Charlton, Lechmere, 403
Cleave, Mr., 33
Cobbett, William, 192
Cochrane, Thomas, Lord, afterwards 10th Earl of Dundonald, 200
Cockburn, Sir Alexander, Lord Chief Justice, 151
Coleridge, John Duke, Lord, Lord Chief Justice of England, 137, 144, 375, 414

Coleridge, Sir John Taylor, 114 *n.*; 257 *n.*; 441
Coleridge, Miss, 175
Copley, John Singleton, sen., 2, 3, 16
Copley, John Singleton, *See* Lord Lyndhurst
Copley, Mrs., Lord Lyndhurst's mother, 3, 10, 137
Cottenham, Charles Christopher Pepys, Earl of, birth and family, 379, 380; educated at Harrow, 381, and Trinity College, Cambridge, 382; enters at Lincoln's Inn, 384; a pupil in Tidd's Chambers, 8, 384; called to the Bar, 385; marriage, 387; receives a silk gown from Lord Lyndhurst, 388; Solicitor-General to Queen Adelaide, *ib.*; enters Parliament, *ib.*; made Solicitor-General, 391; speech on the law of libel, 392; made Master of the Rolls, 393; Lord Commissioner of the Great Seal, *ib.*, and 342; Chancellor, 394, and raised to the Peerage, *ib.*; introduces Bill for dividing the duties of Lord Chancellor, 395 *et seq.*; his inefficiency as a debater, 125, 396; great merits as a judge, 398; demeanour in Court, 400; assailed in the House of Lords, 403; usefulness in the Cabinet, 404; introduces Bill for appointment of additional vice-chancellors, 139, 407; vacates his office, 408; Chancellor for the second time, 409, 450; Lord John Russell's opinion of, *ib.*; legal appointments, 410; prejudices on the Bench, 412; failing health, 414; final resignation, 416; made an earl, *ib.*; death, *ib.*
Cottenham, Lady, 387
'Counting,' ancient ceremony of, 14, 426 *n.*
County Court Bill for Recovery of Small Debts, 100 *et seq.*; 410
Cranworth, Lord, *See* Rolfe, Sir R. M.
Craven, Hon. Keppel, 241, 250
Creevey, Thomas, 23, 35 *n.*; 134, 176, 187, 198, 221, 224, 232, 241, 252, 275, 279, 281
Crémieux, M., 369, 370
Croker, Right Hon. John Wilson, 87; on Ministerial crisis of May 1832, 93 *et seq.*; 204, 210, 292
Cumberland, Duke of, 63, 73 *n.*; 298

Dacre, Lord, 293
Darlington, Earl of, 203, 285
Deceased Wife's Sister, marriage with, 115
'Delicate Investigation,' the, 219, 220, 223, 232 *n.*
Demont, Louisa, 243, 244
Demosthenes, Brougham's translation of, 170, 354
Denman, Thomas Lord, a pupil of Tidd's, 8; joins Midland circuit, 12; made Solicitor-General to Queen Caroline, 232; his opinion of her, 236; distrust of Lyndhurst, 24, 90 *n.*, 120; receives silk gown from him, 58; indiscretion at Queen's trial, 58, 256; opinion of Alderman Wood, 232 *n.*; appointed Lord Chief Justice, 390; judgment in Stockdale *v.* Hansard, 439, 440; reluctance to resign, 365; opinion of Wilde, 422 *n.*; 423, 449
Denman, Lady, 238, 239
Derby, Edward Geoffrey Stanley, Earl of, 112 *n.*; 149, 153, 154, 157, 328, 361
D'Este, Lady Augusta, marries Lord Truro, 445 *et seq.*
D'Este, Sir Augustus, 445
Devon, Earl of, 84 *n.*
Devonshire, Duke of, 285, 286
Dickens, Charles, 18, 19 *n.*, 41, 143, 144, 274 *n.*, 420, 430, 450 *n.*
Dimes, Mr., 415
Disraeli, Benjamin, Earl of Beaconsfield, friendship with Lyndhurst, 110 *et seq.*, 134, 150; 'Endymion,' 86, 88, 93, 108 *n.*; letters to his family, 111, 115, 118, 121, 129 *n.*; letters of Runnymede, 342, 344, 347, 355 *n.*; 396
Dissenters' Marriage Bill, 60, 141
Dod, Charles, 156
Douglas, Sir John, 219
Drakard, John, 193, 194
Duncannon, Lord, 87, 125, 290, 301, 382
Duncombe, Thomas, M.P., 98

Durham, Earl of, 293, 301, 322, 349, 405
Durham clergy, the, 265

Eardley Wilmot, Sir John, 366
'Edinburgh Review,' 116 *et seq.*; 177, 202
Education, Brougham's efforts in the cause of, 207, 268, 277, 343
Eldon, Lord Chancellor, 39, 41 *et seq.*; 49, 51, 53, 57 *et seq.*; 65 *et seq.*; 118, 186, 212, 218, 220 and *n.*; 221, 225, 232, 241, 266 *et seq.*; 298, 305, 386, 426
'Eleanor Louise' Villa, 347, 367
Ellenborough, Lord Chief Justice, 15, 17, 21, 192, 194, 200, 219, 225
Elwin, the Rev. Whitwell, 85 *n.*; 178 *n.*
Erle, Sir William, Chief Justice, 491
Eskgrove, Lord, 176
Exmouth, Lord, 229, 260

Falmouth, Lord, 65
Fauntleroy, Henry, 37 *n.*
Fitzherbert, Mrs., 216, 249
Flynn, Lieutenant, 35, 252
Follett, Sir William, Q.C., 122, 420, 435, 443, 446
Forsyth, William, Q.C., 346 *n.*; 357 *n.*; 376
Frend, Rev. William, 4

Garrow, Sir William, Baron of the Exchequer, 15, 423 and *n.*
Gascoyne, General, 87, 198, 302, 373
Gaussen, Miss Alice C. C., 380
Gell, Sir William, 228, 241, 246, 350
George IV., his Majesty King, 49, 56, 63, 190; libelled by the Hunts, 194, 204; marriage with Caroline of Brunswick, 214; liaison with Mrs. Fitzherbert, 216, 249; separates from his wife, 218; omits her name from the Liturgy, 231; instigates the Bill of Pains and Penalties, 235; anger with Brougham and Denman, 58, 256; death, 286
Gifford, Robert, Lord, Chief Justice of the Common Pleas, 18, 21, 28, 32, 37, 39, 47, 240, 254, 257
Gladstone, Right Hon. W. E., 57, 89 *n.*; 166 *n.*; 167, 176, 188 *n.*; 288, 338, 432
Goderich, Viscount. *See* Earl of Ripon
Goulburn, Right Hon. Henry, 40, 113
Graham, Right Hon. Sir James, 131, 301, 328
Grant, Charles, Lord Glenelg, 172, 345, 353
Granville, Harriet, Countess of, 60 *n.*; 78, 107 *n.*; 122
Greene, Gardiner, brother-in-law of Lord Lyndhurst, 12
Gretton, Dean, 3
Greville, Right Hon. Charles, 48, 55, 56 *n.*; 78, 81, 89, 106, 109, 111, 122, 128, 130 *n.*; 301, 316, 323, 351, 362
Grey, Earl, 55, 56; early admiration for Brougham, 187, 190, 196; letters to him, 272, 278; temporary breach with him, 281; speech on Parliamentary Reform, 77; becomes Prime Minister, 78, 289; friendship with the Lyndhursts, 79; offers Brougham the Chancellorship, 290; attack on the bishops, 90; proffers his resignation in 1832, 93, 311; resigns in 1834, 330; Edinburgh banquet to, 335
Grimthorpe, Lord, 85 *n.*

Hamilton, Lady Anne, 234, 241
Harrowby, Earl, 49, 91, 94, 306
Harvey, Whittle, 316 *n.*, 392
Hatherton, Lord. *See* Littleton
Hayward, Abraham, Q.C., on Lyndhurst, 15, 25, 46, 52, 103, 123, 127, 133, 138; on Brougham, 206, 284, 322, 336, 370
'H.B.,' 312 *n.*, 339, 377
Heathcote, Sir John, 15
Hill, Matthew Davenport, Q.C., 291, 420 *n.*; 430
Holland, Lord, 131, 181, 183, 188, 254, 326
Holland, Sir Henry, 167, 241 *n.*; 250, 232 *n.*
Hone, William, 32, 257
Horne, Sir William, Q.C., 3 *n.*; 80, 316, 390, 391
Horner, Francis, 171, 172, 179, 188, 190 and *n.*; 195
Howick, Viscount, afterwards third Earl Grey, 345, 365

Hownam, Lieutenant, 252
Hunt, Leigh, 192, 194
Hutchinson, Lord, 230, 233, 234

Ingham, John, 13
Inglis, Sir Robert, 63
'Ingoldsby Legends,' the, 293 *n.*; 355 *n.*; and *see* Barham, Rev. R. H.
Irish Municipal Corporations Bill, 128

Jarndyce *v.* Jarndyce, 143, 450 *n.*
Jeffrey, Francis, Lord, 171, 177, 182, 202, 292
Jekyll, Joseph, 29 *n.*
Jersey, Lady, wife of fourth earl, 216, 217, 218
Jersey, Lady, wife of fifth earl, 238
'John Bull,' 261
Johnson, Dr. Samuel, 380, 387
Jones, Ernest, 448
Judicial Committee of the Privy Council, 315, 361

Kent, Duchess of, 348
Kent, Duke of, 348
Kingsdown, Lord, 50 *n.*; 88 *n.*; 114 *n.*; 161, 319, 407, 451
Knight, Miss Cornelia, 226 *n.*
Knight-Bruce, Lord Justice. 118, 139, 412, 428, 453

Lamb, Charles, 430
Langdale, Lord, 58, 146, 321, 344, 350, 394, 396 *et seq.*; 402, 448
Lansdowne, Marquis of, 49, 60, 61, 119, 171, 188, 281, 371
Leach, Sir John, Master of the Rolls, 29 *n.*; 72 *n.*; 225, 229, 392
Le Marchant, Sir Denis, 90 *n.*; 382, 399, 407, 408
Lieven, Princess, 79 *n.*
Life Peers, attempted creation of, 161, 367
Lindsay, Lady Charlotte, 232 *n.*; 251, 259
Littleton, Edward, Lord Hatherton, 329 *et seq.*
Liverpool, Earl of, 22, 35 *n.*; 36, 39, 45, 232, 235, 237, 241 *n.*; 258, 259
Liverpool, election, 198, 356, 373
London University, 278, 321
Londonderry, Marquess of, 297, 300, 301
Lords Justices of Appeal, creation of, 451
Louis Philippe, King of the French, 369
Lucas, E. V., 430
Lushington, Dr., 86 *n.*; 237, 247, 424
Lyndhurst, Lord, born at Boston, Massachusetts, 1; brought to England, 2; school days at Chiswick, 3; enters at Trinity, Cambridge, *ib.*, scholar and Fellow, 5, 6; visit to America, 7; legal studies, 8; special pleader, 11; called to the Bar, 12; defends Ingham the Luddite, 13; Serjeant-at-Law, 14; defends Watson, 17; enters Parliament, 22; charge of political apostasy considered, 23 *et seq.*; first speech in Parliament, 27; Chief Justice of Chester, 28; Solicitor-General, 29; marriage, *ib.*; characteristics as an orator, 30; speaks in vindication of his consistency, 34, 90, 120; takes part in the proceedings against Queen Caroline, 35, 240, 245, 251, 257; made Attorney-General, 37; views on Prisoners' Counsel Bill, 38, 127; Master of the Rolls, 39; Member for Cambridge University, 40; introduces Bills for Chancery Reform, 43, 44, 68, 69; opposes Bills for Catholic Emancipation, 46, 62; temporary breach with Canning, 46; made Lord Chancellor, 49; personal appearance and sobriquet of Mephistopheles, 51; charges of extravagance, 53; Chancellor under Goderich, 55, and under Duke of Wellington, 56; his distribution of patronage, 59, 146; passages at arms with Lord Eldon, 61, 65, 67; assailed by Sir Charles Wetherell, 64, 71; supports Catholic Emancipation, *id.* 64; prosecutes libellers, 73; appoints commissioners to enquire into Law of Real Property and Common Law Procedure, 101, 285; resigns in 1830, 79; appointed Chief Baron, 81; his great judicial qualities, 82 *et seq.*; opposition to the Reform Bill, 89, 92; attempt to form a

government with Duke of Wellington, 93 ; his failure, 96 ; violently attacked for his conduct, 98 ; opposes Local District Courts Bill, 103 ; death of his wife, 107 ; Chancellor a second time, 109 ; friendship with Disraeli, 110 *et seq.*, 115, 150 ; resignation in 1835, 114 ; carries a Bill ' to render certain marriages valid,' 115 ; amends the Municipal Corporations Bill, 117 *et seq.* ; leads the Lords in opposition, 122 ; opposes Irish Municipal Corporations Bill, 128 ; alleged use of the term ' aliens,' *ib.*, 131 ; attacks O'Connell, 129 ; attacked by Sheil, 130 ; opposes Lord Cottenham's Bill for separating functions of Lord Chancellor, 397 ; first of his Parliamentary summaries, 132 ; scene with Lord Melbourne 135 ; second marriage, 136 ; elected High Steward of Cambridge, 137 ; third Chancellorship, 139 ; various estimates of his judicial status, 142 ; action in O'Connell's writ of error, 145 ; final resignation, 147 ; conflict with Lord George Bentinck, 150 ; pursuits in retirement, 151 ; friendship with Brougham, 152 ; criticism on him as Chancellor, 295 ; riddle on Brougham, 364 ; advice to Brougham on translating Demosthenes, 355 ; figures in ' Albert Lunel,' 357 ; reappearance in House of Lords, 153 ; attacked by Lord Campbell, 154 ; operated on for cataract, 156 ; speeches on National Defence, 159 *et seq.* ; opposes the creation of life peers, 162 ; speech on ' Lord Campbell's Act,' 164 ; Lord Campbell's Life of, 166 ; last days and death, 167

Lyndhurst, Lady, the first, 29, 50 *n.* ; 52, 53, 60 *n.* ; 78, 79 *n.* ; 80 *n.* ; her death, 107

Lyndhurst, Lady, the second, 137, 138, 167

Lyttelton, Lord, 137

Macaulay, Lord, 29 *n.* ; 59 and *n.* ; 87, 178, 282, 284, 292, 357 and *n.* ; 360, 370

Maceroni, Colonel, 36

Mackintosh, Sir James, 28, 33 *n.* ; 292, 359

Mahan, Captain, on the Orders in Council, 184 *n.*, 196

Majocchi, Theodore, 242

Malmesbury, Earl of, 214 *et seq.*

Manners-Sutton, Charles, Viscount Canterbury, 95, 144

Manning, Serjeant, 402, 414

Martin, Sir Theodore, Life of Lyndhurst, 2, 19 *n.* ; 28 *n.* ; 51, 85, 109 *n.* ; 146, 163, 165 ; Bon Gaultier Ballads, 157 *n.*

Martineau, Miss Harriet, on Lyndhurst, 25, and *n.* ; on Brougham, 277, 298, 332, 350, 368

Masters in Chancery, abolition of, 451 ; restoration of the title, 452 *n.*

Maule, Sir William Henry, Judge of the Common Pleas, 448

Melbourne, Lord, on Catholic emancipation, 66 ; Prime Minister, 333 ; resignation in 1834, 109, 337 ; attacks on Lyndhurst, 118, 135, 136 *n.* ; angry correspondence with Brougham, 341 ; Prime Minister a second time, *ib.* ; refusal to re-appoint Brougham, 342, 345, 352, 394 ; retorts on Brougham in Parliament, 351 ; final resignation, 358 ; reconciliation with Brougham, 357 ; appoints Lord Cottenham Chancellor, 394 ; his regard for him, 404 ; and for Wilde, 442

Milan Commission, the, 229, 235, 254

Montgomery, Alfred, 353

Municipal Corporations Act, the, 117 *et seq.* ; 343, 402

Napier, Macvey, 178, 360

Negro slavery, abolition of, 188, 314, 374

Newcastle, Duke of, 404, 431

Newman, Cardinal, 63

Norfolk, Duke of, 168

O'Connell, Daniel, 62, 97, 113 ; secret negotiation with Mr. Littleton, 329 ; Lyndhurst's attack on, 129 ; writ of error to quash conviction of, 144, 363, 401

Orange, Prince of, 224
Orders in Council, 184, 195

Palmerston, Viscount, 40, 49, 337
Park, Sir James Alan, Justice of the Common Pleas, 54, 127 *n.*, 186, 200
Parke, Sir James. *See* Lord Wensleydale
Parkes, Joseph, 119
Peacock, Thomas Love, 278
Peel, Sir Robert, 49, 57, 62, 87; assailed by Brougham, 211, 272; conduct in ministerial crisis of 1832, 93; first ministry, 112, 341; supports Lyndhurst as High Steward of Cambridge, 137; second ministry, 139; final resignation, 147; death, 156 *n.*
Pemberton-Leigh, Thomas. *See* Lord Kingsdown
'Pepys, A later,' 387 *n.*
Pepys, Henry, Bishop of Worcester, 381, 405, 414
Pepys, Sir Charles Christopher. *See* Lord Cottenham
Pepys, Sir Lucas, 379, 384, 416
Pepys, Sir William Weller, father of Lord Cottenham, 379, 380, 383, 385, 387
Pepys, Sir William, brother of Lord Cottenham, 381, 416
Perceval, Right Hon. Spencer, assassination of, 197; friendship with Princess of Wales, 220, 221
Phillpotts, Henry, Bishop of Exeter, 46, 86, 91, 116, 264, 298, 405
Plumer, Sir Thomas, Vice-Chancellor, 43, 220
Pocklington School, 209
Pollock, Sir Frederick, Chief Baron, on Campbell's Life of Lyndhurst, 166; and see 171 *n.*, 282, 446
Ponsonby, Right Hon. George, 189, 201, 207
Powell, Allan, 229, 255
Preston, Richard, 294
Princess of Wales. *See* Queen Caroline
Prisoners' Counsel Bill, 38, 127
'Punch,' 160, 370, 377

'Quarterly Review,' 36, 202, 210 and *passim*.

Reeve, Henry, 51, 119, 254 *n.*; 289 *n.*
Reform Bill, the, 86 *et seq.*; 288, 289, 301 *et seq.*
Restelli, Giuseppe, 254
Ripon, Earl of, 49, 55, 56, 108, 328, 382
Robertson, Professor, 169, 180, 182
Robinson, Crabb, 4, 14, 17 *n.*, 52, 212, 353, 426
Robinson, Sir Frederick. *See* Ripon, Earl of
Roebuck, Right Hon. J. A., 90, 288, 289, 303, 313
Rolfe, Sir Robert Monsey, Lord Cranworth, 163, 164, 435, 437, 448, 453
Romilly, Sir Samuel, 23, 27, 42, 178, 204, 219, 272, 385
Rose, Sir George, 293 *n.*, 310, 375
Rosslyn, Earl of, 181, 187
Rough, Serjeant, 4, 14
'Runnymede, Letters of.' *See* Disraeli
Russell, Lord John, 33 *n.*; 86, 128, 328, 337, 409

Sadler, Michael, M.P., 430
St. Leonards, Lord. *See* Sugden
St. Vincent, Admiral, Earl of, 181, 182
Salisbury, Marquess of, 298
Saye and Sele, Lord, 241 *n.*
Scarlett, Sir James, 24, 34, 46, 114, 192, 200, 283, 339
Scott, John, 192
Sefton, Earl of, 198, 291
Selborne, Earl of, 142, 413, 414, 454
Serjeants' case, the, 316, 420, 434
Shadwell, Sir Lancelot, Vice-Chancellor, 342, 407, 448
Shaftesbury, sixth Earl of, 299, 445
Shaftesbury, seventh Earl of, 146
Sheil, Richard Lalor, M.P., 130, 376
Shepherd, Sir Samuel, Attorney-General, 18, 29
Sheridan, Richard Brinsley, 190
Sidmouth, Viscount, 25 *n.*; 32, 158
Six Acts, the, 32, 36
Six Clerks' office, abolition of the, 140, 450
Small *v.* Attwood, 84, 427
Smith, John, missionary, 275
Smith, Sir Sidney, 219
Smith, Rev. Sydney, 59, 139 *n.*; 177, 178, 245 *n.*; 292, 296
Snagge, Sir Thomas, 101, 410 *n.*
Social Science Congress, 372

Southey, Robert, 73 *n.*; 212, 454
Spankie, Serjeant, 114 *n.*; 434
Spencer, Earl. *See* Lord Althorp
Stanhope, Earl, 298
Stanley, Hon. Geoffrey Edward. *See* Earl of Derby
Stockdale *v.* Hansard, 437 *et seq.*
Stuart de Rothesay, Lord, 174
Stubbs, William, Bishop of Oxford, 286
Sugden, Sir Edward, Lord St. Leonards, 72, 73, 84 *n.*, 146, 295, 316 *n.*, 393, 427
Sussex, Duke of, 444

Tarleton, General, 198, 373
Taylor, Michael Angelo, 42, 45, 225, 279
Taylor, Sir Herbert, 338
Thellusson Act, 108
Thesiger, Sir Frederick, Lord Chelmsford, 442, 446
Thistlewood, Arthur, 17, 34
Tidd, William, Lords Lyndhurst, Campbell, Denman and Cottenham all read in his chambers, 7, 154, 384; the debating society among his pupils, 10, 420
Tierney, Right Hon. George, M.P., 49, 207, 281, 285
'Times,' the, 98, 123, 297, 302, 326, 332, 337, 340, 341, 355, 370
Tindal, Sir Nicholas Conyngham, Chief Justice of the Common Pleas, 183, 237, 283, 436, 447
Truro, Lady, 446
Truro, Thomas Wilde, Lord, birth, 417; educated at St. Paul's School, *ib.*; enters his father's office at an early age, 418; admitted Attorney, *ib.*; called to the Bar, 419; enormous industry, 420; rapid success, 422; professional prejudice against, *ib. n.*; 423; counsel to Queen Caroline, 423; characteristics as an advocate, 425, 429; serjeant-at-law, 426; retained in Small *v.* Attwood, 34 *n.*, 427; conflicts with Lord Wynford, 429; twice contests Newark unsuccessfully, 430; is elected, 431; defeated in the following year, 432; opposes the throwing open of the Common Pleas, 434 *et seq.*; re-elected for Newark, 436; Solicitor-General, 437; defends Privileges of the House of Commons in proceedings arising out of Stockdale *v.* Hansard, 438 *et seq.*; advocates the removal of the Law Courts from Westminster, 441; foregoes a judgeship, 443; Attorney-General, 443; elected for Worcester, *ib.*; represents O'Connell on writ of error, 443; appears in the Sussex claim, 444; marries Lady Augusta d'Este, 445; made Chief Justice of the Common Pleas, 447; Chancellor, 449; his reforms in Chancery, 450 *et seq.*; patronage, 453; disliked by Brougham, 364, 446, 454 *n.*; goes out with the Russell ministry, 454; death, *ib.*

Victoria, Her Majesty Queen, 134, 348

Warren, Charles, 29 *n.*; 40
Warren, Samuel, author of 'Ten Thousand a Year,' 8, 15, 59 *n.*; 316 *n.*
Watson, James, 17 *et seq.*
Watson, Sir William, Baron of the Exchequer, 83
Wellesley, Marquess of, 293, 329 *et seq.*
Wellington, Duke of, 36, 56, 58, 62, 66, 77, 78, 93 *et seq.*; 109, 179, 202, 216, 236, 294, 338, 360 *n.*; 370, 404
Wensleydale, Lord, 162, 164, 165, 240
Westbury, Lord, 85
Western, Charles Callis, M.P., 204
Wetherell, Sir Charles, M.P., counsel for Watson, 17, 37; attacks Lyndhurst, 64, 71; pretext of the Bristol riots, 90; counsel in Municipal Corporations Bill, 118; death, 155; comment on Brougham, 306 *n.*
Wharncliffe, Lord, 91
Whitbread, Samuel, M.P., 201, 222, 224, 272
Wigram, Sir James, Vice-Chancellor, 407, 413
Wilberforce, William, 176 *n.*, 180, 188, 209 *n.*, 211, 236, 237, 288
Wilde, John, 417, 419

Wilde, Thomas. *See* Lord Truro
Wilde, Thomas, senr., 417, 418
Wilkins, Serjeant, 430, 448
William IV., his Majesty, dissolves Parliament in person, May 1831, 87, 303; accepts Melbourne's resignation, 108, 338; dislike of Brougham, 313, 333, 335
Williams, Ambrose, 265
Williams, Sir John, Justice of the King's Bench, 38, 43, 44, 237, 244, 247, 250, 267 *n.*
Wilson, Sir Robert, 36, 193, 262
Winchilsea, Earl of, 65, 273, 301
Wood, Sir George, Baron of the Exchequer, 193, 265
Wood, Rev. James, D.D., 209
Wood, Sir Matthew, Alderman, 232, 238, 423
Wood, William Page, Lord Hatherley, 232 *n.*
Woodcock, Lieutenant, 300
Wordsworth, William, 212
Wynford, Lord, 15, 28, 298, 320, 429

END OF THE FIRST VOLUME

PRINTED BY
SPOTTISWOODE AND CO. LTD., NEW-STREET SQUARE
LONDON

4198248

University of California
SOUTHERN REGIONAL LIBRARY FACILITY
305 De Neve Drive - Parking Lot 17 • Box 951388
LOS ANGELES, CALIFORNIA 90095-1388
Return this material to the library from which it was borrowed.

University Of California, Los Angeles
L 007 562 878 4
UC SOUTHERN REGIONAL LIBRARY FACILITY
AA 000 840 227 3

for
nal
y